

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,) 07-CR-00550-RBS-3
)
)
 vs.)
)
KABONI SAVAGE,)
)
) Philadelphia, PA
 Defendant.) October 22, 2010
) 10:23 a.m.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE R. BARCLAY SURRICK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR THE GOVERNMENT:

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EXHIBITS:ID.EV.

FOR THE DEFENDANT:

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CLOSING ARGUMENT:

By Mr. Hoey

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By Mr. Troyer

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1 (The following was heard in open court at 10:23:54
2 a.m.)

3 THE COURT: Okay. We have the case of United States
4 versus Kaboni Savage. It's No. 7-550-3.

5 Counsel, please identify yourselves for the record.

6 MR. TROYER: Good morning, Your Honor. David
7 Troyer, Assistant U.S. Attorney, for the Government, and I'm
8 accompanied, of course, by Christine Sykes, also an Assistant
9 U.S. Attorney, FBI Special Agent Kevin Lewis.

10 I would also like to introduce the Court to a new
11 member of the trial team, John Gallagher, who's an assistant
12 U.S. Attorney, as well. He'll be working on the case with us.

13 MR. GALLAGHER: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MS. SYKES: Good morning, Your Honor.

16 MR. HOEY: Good morning, sir. Christian Hoey, on
17 behalf of the defendant, Kaboni Savage.

18 MR. SULLIVAN: Good morning Your Honor. Tim
19 Sullivan, on behalf of Mr. Savage, who is present.

20 THE COURT: All right. Counsel, you received a copy
21 of the memorandum and order that dealt with the issue that was
22 raised at the last hearing. We're here this morning to deal
23 with those areas that the Court set forth and are appropriate
24 for the Court's consideration.

25 Mr. Hoey, how do you intend to proceed on this

1 matter?

2 MR. HOEY: We do intend to proceed, Your Honor, by
3 presenting some testimony this morning and oral argument
4 following the receipt of that evidence.

5 THE COURT: All right. And what testimony do you
6 intend to present?

7 MR. HOEY: Your Honor, we intend to call Mr. Savage
8 to the stand to outline certain issues pertinent to the
9 motions that we filed. We have had an opportunity to discuss
10 that with him at length this morning. Mr. Sullivan and I met
11 with him and discussed these issues with him. In lieu of
12 submitting an affidavit he wishes to address the Court
13 directly with these ideas.

14 THE COURT: Did you discuss with him the fact that
15 if he takes the witness stand and testifies, anything that he
16 says during the course of that testimony can be used at trial
17 in this matter?

18 MR. HOEY: We did, Your Honor. We discussed that
19 this is obviously a court of record. He'll be placed under
20 oath, and those things that he says today will be recorded for
21 permanency's sake and reduced to a transcript perhaps at a
22 later date. He knows and understands that that is a -- an
23 issue that he faces today, subject to cross-examination, of
24 course, and he wishes to proceed.

25 THE COURT: It was your advice to -- that he proceed

1 by way of affidavit?

2 MR. HOEY: By way of background on that issue, Your
3 Honor, Mr. Sullivan and I drafted a lengthy affidavit that
4 contains most of the facts. It's 23 paragraphs in length,
5 with some modifications that we made downstairs moments ago,
6 that contain really the pertinent facts that we would ask the
7 Court to consider.

8 There are, I guess, portions of this affidavit that
9 Mr. Kabani Savage would like to expand on by way of live
10 testimony.

11 We did propose this as a method and means of
12 presenting the evidence to the Court, upon which it could make
13 its decision without live testimony. Mr. Savage acknowledges
14 that he has the right to do that.

15 The Government has in fact agreed to accept the
16 affidavit, subject to offering its own evidence, of course,
17 and rebutting anything in it they wish to rebut, and Mr.
18 Savage has chosen not to pursue that route, Your Honor.

19 THE COURT: All right. Mr. Savage, you just heard
20 what Mr. Hoey said?

21 THE DEFENDANT: Yes.

22 THE COURT: You understand that you do not have to
23 testify in this matter, and that if you choose to testify,
24 anything that you say can be used against you at a later date?
25 You understand that?

1 THE WITNESS: Yes.

2 THE COURT: You understand that you will be on the
3 witness stand. You will be questioned by your attorney, and
4 then the Assistant United States Attorney will have the
5 opportunity to cross examine you. You understand that.

6 THE DEFENDANT: Yes.

7 THE COURT: Your attorneys have indicated that they
8 have prepared an affidavit which would cover the subject
9 matter that we're dealing with here, but that you have chosen
10 not to pursue an affidavit; rather, you'd like to testify
11 yourself, is that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: And you do that, knowing that whatever
14 you say during the course of your testimony can be used
15 against you.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you have any questions about what
18 you're doing, Mr. Savage?

19 THE DEFENDANT: No.

20 THE COURT: All right. Counsel, we'll hear whatever
21 you want to present.

22 MR. HOEY: One moment, please, sir.

23 THE COURT: Yes, indeed.

24 (Pause in proceedings.)

25 MR. SULLIVAN: Yeah, just one preliminary matter.

1 The marshals have deemed it necessary, I guess, to have Mr.
2 Savage shackled while he's in court. I don't know the reason
3 why, and if he's going to testify, have to look at documents,
4 I'd object to Mr. Savage being -- unless the Court has
5 information that the defense doesn't have or the Government
6 has, I don't see the necessity that -- even in a non-jury
7 proceeding today that he needs to be shackled while he's in
8 court. He's in a -- three pieces, shackles on his feet, and
9 his hands are cuffed.

10 THE COURT: Marshals.

11 U.S. MARSHAL LEWIS: We can have one, so he can have
12 use of one arm, one hand.

13 THE COURT: Go ahead.

14 MR. HOEY: Thank you.

15 U.S. MARSHAL LEWIS: Bring him to the --

16 MR. SULLIVAN: Thank you, Your Honor.

17 U.S. MARSHAL LEWIS: -- witness stand, Your Honor?

18 THE COURT: Excuse me?

19 U.S. MARSHAL LEWIS: We going to bring him up to the
20 witness stand?

21 THE COURT: Certainly.

22 (Pause in proceedings.)

23 COURTROOM DEPUTY: Mr. Savage, if you can please
24 remain standing and raise your right hand.

25 KABONI SAVAGE, DEFENDANT, SWORN

1 COURTROOM DEPUTY: Please be seated.

2 MR. HOEY: May I inquire, Your Honor?

3 THE COURT: Yes, indeed.

4 DIRECT EXAMINATION

5 BY MR. HOEY:

6 Q Sir, can you state your name for the record and spell
7 your last name, please?

8 A Kaboni Savage, S-A-V-A-G-E.

9 Q Okay. Where are you being housed literally today as --
10 as we speak?

11 A FDC.

12 Q Okay. Can you tell the Court what conditions you're
13 housed in at the FDC?

14 First -- first of all, when did you arrive there, and
15 where did you go, and where did you stay?

16 A I arrived there approximately 11:00 o'clock yesterday,
17 a.m., and sent straight to a psych cell, suicide cell.

18 Q Okay. Is the FDC the Federal Detention Center --

19 A Yes.

20 Q -- in Philadelphia?

21 A Yes.

22 Q Can you tell the Court whether the cell that you were
23 housed in yesterday has running water or an operative toilet?

24 A None, neither.

25 Q Were you housed in that cell throughout the day

1 yesterday, into the evening and through this morning?

2 A Yes.

3 Q Is that a cell that you had been in before?

4 A Since -- they've been putting me in that cell since, I
5 believe, February 18th of this year. The lights stay on 24
6 hours, two bright lights.

7 Q You had been back to the FDC from the Metropolitan
8 Correctional Center in New York on occasion in 2010, is that
9 correct?

10 A Yes.

11 Q And when you returned to the FDC in Philadelphia, were
12 you housed in the cell that you've jus described?

13 A Not initially. I was on the second floor. The held me
14 in the second floor. It's playing country music. I had a
15 situation. I addressed the Court.

16 They were playing country music necessary for 24 hours.
17 Due to -- I asked the captain to stop playing the music, and
18 he said he couldn't. So I asked him again to change the
19 station.

20 It's country music. I don't listen to country
21 music, and he laughed and joked and said, "I forgot niggers
22 can't square dance." It was a joke to him. Every since I
23 addressed that in front of the Court, small -- I've never been
24 put back in that cell, coincidentally.

25 Q Have you otherwise been housed at the FDC in the cell

1 that you've just described?

2 A Yes, every since that day. Every time I came back to
3 Court from MCC, since then I've been in this psych cell.

4 Q You indicated that the light is on in your cell. Is that
5 light on 24 hours a day?

6 A Continuously, 24 hours a day.

7 Q Is it a dim light, a bright light, a moderate light?

8 A An illuminated light. It's bright. I'm sleeping next to
9 the sun.

10 Q Is it preventing you from sleeping or interacting in a
11 normal manner?

12 A No question. How can I sleep when the light stays on
13 like that constantly?

14 Q I want to talk to you now about your housing arrangements
15 prior to getting here yesterday.

16 For the last year or so have you been housed at the
17 Metropolitan Correctional Center with the MCC in New York?

18 A For the last approximately 16 months.

19 Q Are you subject to special administrative measures
20 confining your movement in that facility?

21 A Yes.

22 Q And have you been so confined under those measures since
23 your arrival there 16 months ago?

24 A Yes.

25 Q Moving backward, if you will, to a procedural history.

1 MR. HOEY: And if I may be permitted some leeway in
2 cross examining or leading the witness, Your Honor --

3 THE COURT: Yes, you may.

4 MR. HOEY: -- through some of the procedural
5 history?

6 THE COURT: Yes, indeed.

7 BY MR. HOEY:

8 Q Between April 13 of 2004 and October 1 of 2004 were you
9 sequestered from the general population in the special housing
10 unit here at the FDC?

11 A Yes.

12 Q Were you confined to your cell for 23 hours per day in
13 that particular unit during that particular time?

14 A Give or take, yes.

15 Q Between -- excuse me. On February 4 of 2005 were you
16 moved to the housing unit on the second floor of the FDC and
17 confined to your cell 24 hours per day?

18 A Yes.

19 Q In December of 2005 were you transported to the United
20 States Penitentiary at Lewisburg, Pennsylvania?

21 A Yes.

22 Q Between September 22 of 2005 and April of 2006 were you
23 housed at USP, Lewisburg, and subjected to 23-hour per day
24 confinement in your cell?

25 A Yes, I was placed in a transient unit.

1 Q Were you provided any recreational time during that
2 period?

3 A Sporadically, but general population, shoot, they get
4 preference, the rec, first, then if they have time, the
5 transient unit can go, but we're not allowed to go to the law
6 library, anything, no visits, anything. I'm on a transient
7 unit so it's different requirements.

8 Q What is a transient unit?

9 A A unit that they place you on, allegedly waiting for you
10 to be transferred to another facility.

11 Q And during the time that you were in that transfer unit
12 between September 22 of '05 and April of '06 were you
13 permitted any social visits?

14 A None. Not -- they're not allowed when you're in transit.

15 Q How many telephone calls or social telephone calls were
16 you provided to your family during that period of time?

17 A Was there six months, little over six months. Maybe two.

18 Q Were you provided any access to the law library during
19 that period of time?

20 A None. It's prohibited --

21 Q Let me ask --

22 A -- while you're in transit.

23 Q Let me ask you. The period of December 22 of '05 to
24 April of 2006, was that a period of time following your
25 conviction here in Federal Court?

1 A Yes, after conviction.

2 Q Did you require --

3 A Three days after the conviction.

4 Q What would you have used the law library for during that
5 period of time?

6 A Post-conviction, sentencing, drug amount. You name it,
7 as far as anything pertaining to my conviction. Filing post-
8 acquittal motions, drug amount. Everything that pertains to
9 the process of post-conviction.

10 Q And --

11 A Working on my appeal.

12 Q Had you been sentenced while you were at Lewisburg?

13 A No.

14 Q Were you eventually brought back to the FDC on April 21
15 of 2006?

16 A Yes.

17 Q Were you returned from Lewisburg and housed in the
18 special housing unit or SHU in the FDC?

19 A Yeah, I was placed in the SHU for a month till I was
20 designated to Atlanta.

21 Q Were you subjected to 23 hours of lockdown per day during
22 that period?

23 A Twenty-four. They didn't let me out at all during that
24 month.

25 Q How many -- strike that.

1 How long did you remain here when you were brought back
2 on the 21st of April?

3 A I believe I was here for a month, little over a month. I
4 went to -- I got to Atlanta, I believe May 25th, so a little
5 over a month.

6 Q How many social visits did you have during that period of
7 time?

8 A I was allowed to have, believe one social visit
9 without -- except for my sister.

10 Q Did you have any telephone use privilege?

11 A None.

12 Q After you were sentenced on April 27, were you eventually
13 transferred to USP Atlanta, Georgia?

14 A Yes.

15 Q Can you tell the Court where you were housed when you
16 arrived at that facility, please?

17 A General population.

18 Q Had you been sentenced?

19 A Yes, sentenced.

20 Q Had you been indicted in the new case for which you are
21 about to stand trial?

22 A No.

23 Q When you say general population, can you explain to the
24 Court whether or not you had a cell mate?

25 A Yes, I had a cell mate, access to law library, gym, work,

1 wherever you wanted to work at, facilities, unit call, the
2 kitchen, law library, workout, access to work at commissary,
3 visits during the week or on weekends, goes by a point system.
4 You're allowed to have 25 people on your visiting list, had a
5 few visits during that eight-month time I spent from my
6 family, my sister, that they won't let me speak to now, but my
7 mother, friends.

8 That was in population. I had access to every --
9 everything everybody else had access to.

10 Q Can you tell the Court how many write-ups or infractions
11 you were cited for during the period of time that you were in
12 general population at USP Atlanta?

13 A None.

14 Q Can you tell the Court what advantages you took of the
15 educational system at USP Atlanta?

16 A I had the -- the Judge required me in my sentencing to
17 get my GED. So they automatically put you in the GED program
18 when they see that in your file.

19 So they -- they signed me up, but I took a pre-test
20 and the class was crowded, so they told me -- they basically
21 knew I passed the GED. I didn't need to stay in the class.
22 Other people could utilize it.

23 So they put me in HVAC class, and you had to wait five to
24 six months to get a date to take the GED test 'cause they do
25 it periodically, annually. I don't -- I don't know how it

1 goes, but my next schedule was six months. So they put me
2 straight in HVAC class. I was in HVAC class for the last four
3 months while I was there.

4 Q Did you -- the HVAC, being the heating, ventilation and
5 air conditioning class?

6 A Yes.

7 Q Were you also working in the prison kitchen while housed
8 in general population?

9 A Yes.

10 Q If you know, sir, is that a maximum security, medium
11 security or a low security?

12 A It's a medium security now. They just still use the old
13 name, penitentiary.

14 Q On or about February 7, 2007 were you then committed to
15 the terms and conditions of the SAMS or special administrative
16 measures at the prison in Atlanta?

17 A Yes.

18 Q Did you have any ability to contest or an opportunity to
19 contest the imposition of those sanctions?

20 A No, I was took -- took straight to the SHU.

21 Q Were you afforded a -- a hearing?

22 A No DHO hearing, none of the above, straight to -- they
23 got a side pocket. I was sequestered from the regular
24 population in the SHU.

25 Q Could you tell the Court after February 7, 2007 and

1 between -- between that date and October 28 of 2007 did you
2 remain housed at USP Atlanta?

3 A Yes, for approximately nine months.

4 Q Were you subjected to the SAMS confinement restrictions?

5 A Yes, no visits, same exact thing, no papers.

6 Q What I'd like you to do is tell the Judge what
7 restrictions you had during that period of time under the
8 SAMS. How long were you in your cell each day?

9 A Well, thankfully, Atlanta, the did give me my recreation.
10 I can go to the yard with everybody else, but I had to have a
11 cell alone, been working on the cell alone situation, so I did
12 get to the yard basically every day there, five days a week,
13 but I couldn't get newspapers, and if I did, editorials was
14 took out, the iPads.

15 They had to be two weeks or a month later. They
16 prohibited me from getting one particular newspaper cause they
17 said it was -- it promoted violence.

18 I wasn't -- wasn't allowed certain books. My family
19 would send me books. I would get a rejection notice, no
20 apparent reason.

21 I got a phone call maybe three times under those
22 conditions. For the first five or six months under those
23 conditions I didn't receive a phone call, if I remember
24 correctly, 'cause they didn't know how to set it up.

25 SAMS was new to them. They -- they didn't know why I was

1 under it. The just told me to file my administrative remedy
2 process, so that's the route I took.

3 Q When you say telephone calls -- by the way, are they
4 monitored calls? In other words, is someone listening into
5 your telephone call?

6 A A few people, absolutely.

7 Q Okay. Your -- your social visits that you discussed,
8 literally, from here to the end of this discussion today, are
9 they monitored social visits?

10 A Yes.

11 Q What do you mean by "monitored?"

12 A Agent Lewis or -- forget the other guy's name, they
13 monitor it downstairs in MCC. The officers upstairs monitor
14 it, and it's a camera in the cell that monitors it that
15 somebody else monitors.

16 Q So they listen to what you're saying to your social
17 visitors.

18 A Absolutely.

19 Q Now, at some point in time you were transferred out of
20 U.S. -- transferred out of USP Atlanta after October 28 of
21 '07, is that right?

22 A Yes.

23 Q Where did you go next?

24 A The ADX. Well, I went to Oklahoma first in the transit,
25 but I stayed there at night and went straight to Colorado's

1 ADX.

2 Q Did you eventually arrive at the Administrative Maximum
3 Prison at Florence, Colorado, known as ADX Colorado?

4 A Yes.

5 Q When did you get there?

6 A Believe it was October 26th or 7th of that year.

7 Q 2007?

8 A Yes.

9 Q Can you tell the Court whether you were subjected to the
10 special administrative measures at that institution?

11 A Yes, and I was put in a -- a quarantine cell in there.

12 Q What's a quarantine cell?

13 A That cell is a -- it's -- it's different from population
14 in ADX. Those cells have cameras in it. The light stays on
15 24 hours a day, and I'm not allowed a shower curtain.

16 Q When you say a light, is that in the cell or the hallway?

17 A In the cell.

18 Q I see. Is there -- was there any type of use of the yard
19 or recreation time at ADX Colorado?

20 A Not while you're in quarantine.

21 Q How long were you in that cell?

22 A Probably a month.

23 Q Did you have any social visits?

24 A None.

25 Q Any telephone calls?

1 A None.

2 Q Any receipt of periodicals, newspapers, magazines?

3 A None. I wasn't allowed commissary. I wasn't allowed ear
4 plugs for the TV. They kept the TV -- no -- I wasn't allowed
5 anything. I was just in there with a sheet and a blanket.

6 Q Did you eventually get out of that cell and get placed in
7 a cell at ADX and subjected to SAMS?

8 A Yes, I was placed on H Unit, and I got access to
9 commissary and recreation every other day.

10 Q Who were the other inmates, if you know, on the H Unit?

11 A All terrorists. Zakawi, Musawi, Ramsey, Yusef, Faris
12 (all phonetic), the guy that tried to blow up the Brooklyn
13 Bridge.

14 Nothing but terrorists, and the two Aryan Brotherhood
15 leaders was on that block, and -- but they were placed on a
16 separate unit with the rest of the Aryan brothers.

17 Q Did you stay at ADX Colorado, other than coming to the
18 FDC here for short visits for Court-related matters? Did you
19 stay there until you were transferred to the MCC primarily?

20 A No. Yes, I stayed there until I was transferred to the
21 FDC. Besides the transit I went from the ADX to Seattle for
22 eight -- eight or nine days, then from Seattle, Oklahoma for
23 two or three weeks, then I got here.

24 Q Okay. And eventually you end up at the MCC.

25 A Yes, after I stayed here 12 days --

1 Q Let's talk about --

2 A -- in the FDC.

3 Q -- ADX Colorado. How many hours per day were you
4 confined to yourself during that period of time?

5 A Twenty-four, because you get rec every other day, but
6 there's so many things that go on during that rec. Those
7 terrorists are still at war with this country. They're
8 throwing feces. They're making bombs.

9 So those guards are constantly strapping up or shielding
10 up, extracting myself, food strikes, whatever, and if that's
11 going on, we don't get recreation. We don't get showers, no
12 showers in those particular cells. They take us to showers.
13 So we don't get any of that.

14 We don't get commissary, and this -- it's been going on
15 since I've been there. They are still at war. It's still
16 going on. So anything that affects them, quite naturally,
17 affects me.

18 Q All right. With respect to the light, the -- the limited
19 social visits, the -- the literature that was restricted, the
20 23 hours per day lockdown --

21 A No, no lights in ADX. You control your own lights. Can
22 sleep in darkness. I had access to commissary.

23 They provide you newspapers, so my family didn't have to
24 buy it. They provide us with USA Today and I believe the
25 Colorado Post, but they would take the editorials out -- out

1 that.

2 It's whatever anything they deem could be sent a message.
3 So if the paper was a 30-page paper, we may get four pages of
4 that.

5 Q Moving forward to May 15 of 2009, did you get eventually
6 get transferred out of ADX Colorado?

7 A Yes.

8 Q Where did you go next?

9 A Went to Seattle transit unit eight or nine days, then I
10 went to Oklahoma for maybe, little over two weeks in transit,
11 then I got to FDC.

12 Q When you arrived at the FDC between May 15, '09 and June
13 1, '09, why were you housed here? Why were you coming back to
14 Philadelphia?

15 A I was re-indicted in --

16 Q In the -- in the instant matter.

17 A In the instant matter.

18 Q Okay. And did -- where did you stay at the FDC?

19 A I was placed in the second floor cell that I was placed
20 in during my trial.

21 Q Okay.

22 A I stayed there, believe, ten or 11 months during my
23 trial, and I was put right back in that cell.

24 Q So from May 15 of '09 to June 1 of '09 did you stay on
25 the second floor here at the FDC in Philadelphia?

1 A No. I got here -- I left ADX May 15th, but I didn't get
2 here till June 1st, so I stayed in the second floor for 11
3 days.

4 Q All right. And eventually you were transferred to MCC
5 New York on the 14th of June, is that right?

6 A Believe the 12th.

7 Q Okay. Talk to the Court now about the conditions of
8 confinement between June 1 of '09 and June 12th of '09 here at
9 the FDC. How many hours a day were you confined to your cell?

10 A In FDC?

11 Q Yes.

12 A Twenty-four hours. Well, I did --

13 Q Was the light --

14 A They did take me to work, two jobs, I believe. They
15 would take me to rec when they was doing count for the rest of
16 the population. So I got to rec maybe two or three times
17 around 4:00 o'clock.

18 Q Did the light remain on 24 hours a day in that cell?

19 A In FDC?

20 Q Yes.

21 A No. Well, there is a light. It's a -- it's a -- it's a
22 split cell. There's a light in the bathroom, but you can see
23 it, but you do -- you are able to sleep in some relative
24 darkness.

25 Q Did you have any personal visits during that period of

1 time?

2 A None.

3 Q Have any monitored telephone calls during that time?

4 A No access, commissary, not any. Well, they did give me
5 commissary, believe two days before I left, and that was a
6 mistake. They didn't want to give me that.

7 Q Were you again separated from the general population?

8 A No -- there's nothing on that second floor but a -- a
9 nurse's station and across from it another -- the suicide
10 cells or dry cell, and I was the only one down there.

11 Q All right. On June 14 of '09 you transferred to the
12 Metropolitan Correctional Center in Manhattan, is that
13 correct?

14 A Yes.

15 Q Have you primarily resided there as an inmate --

16 A Yes.

17 Q -- through today?

18 A Yes.

19 Q Can you tell the Court what unit you're housed in at the
20 MCC?

21 A Ten South.

22 Q What do you understand Ten South to be at that particular
23 unit?

24 A What it is, it's a terrorist unit.

25 Q Who are you housed with on that block?

1 A Now? There's so many that's -- had come and gone, but
2 now Faisal Shahzad, Times Square bomber, Ghailani (phonetic),
3 Yemenese bomber, Hashmen (phonetic), New England bomber.
4 Terrorists, all terrorists.

5 Q Are you in your own cell there?

6 A Yes.

7 Q Is there a light on in your cell 24 hours a day?

8 A Twenty-four hours a day.

9 Q Have you had yard privileges?

10 A There's no recreation. There's no yard. It's -- their
11 recreation is another cell.

12 Q Have you ever gone to recreation since you got there in
13 June of 2009?

14 A Only time I smell fresh air is when I come to court. I
15 asked the marshal -- the guard to roll the window down.
16 There's -- there's no recreation there, none whatsoever.

17 Q How many hours a day are you confined to your cell at the
18 MCC?

19 A Twenty-four hours a day.

20 Q Do you have social visits?

21 A When they allow me to. I'm scheduled to have them every
22 other week, but they're always calling my mother, telling her
23 she can't come for this reason. The FBI can't make it so she
24 can't come. They can't monitor it. There's always a reason
25 or another, but --

1 Q Well, have there ever been any times where your social
2 visits were cut short or people were asked to leave before the
3 social visit was concluded?

4 A Yes, and they were late. My mother would sometimes get
5 there, visit supposed to start 1:00, she might get there at
6 1:30, but she have to leave at scheduled a lot of times, so
7 there's always a problem when mom visits.

8 Q Now, are they scheduled every month, once a month, twice
9 a month? Is there a particular schedule that is supposed to
10 be followed regarding social visits?

11 A From my understanding, they -- my mother contacts them
12 and let her know what day she's coming.

13 Q Okay.

14 A Same way with ADX. She -- she contact them and let
15 her -- tell them she will be out there a certain day. I
16 believe it was from Monday to Wednesday. I had a three-day --
17 they could come out there for three days, but the Agent Lewis
18 didn't get there Monday, some apparent reason, so I didn't get
19 to see them till Tuesday and Wednesday. The same thing goes
20 in MCC.

21 Q At the MCC do you know if -- if your mother is permitted
22 to see you every week there, or is she restricted to a
23 particular number of visits per month?

24 A Initially, it was two hours a visit once a week, but for
25 some reason he told me he would give me two hours at one

1 particular visit.

2 I believe it was four hours a month initially I was
3 allowed to see my family, but he said he would break them
4 down, two hours biweekly, so I would get two visits for that
5 month --

6 Q Who were you --

7 A -- instead of waiting one month for four-hour visit.

8 Q Who are you referring to? Who is he?

9 A Haas.

10 Q Mr. Haas?

11 A Yes.

12 Q Is he an administrator at the MCC? Does he work there?

13 A He's not a counselor. He's not a -- I don't know what he
14 is. I just call him a Nazi. I don't know what he is.

15 Q All right. Is he employed by the prison?

16 A Yes.

17 Q All right. And he is somebody that talks to you about
18 your social visits and things of that sort?

19 A Yes.

20 Q All right. So at some point he agreed to split up your
21 four hours to two separate visits of two hours each?

22 A I don't know what happened. I don't know if he conducted
23 that with my mother or she worked it out. I don't know how
24 that happened, but I know eventually that's how my visits were
25 being meted out.

1 Q So have your visits, social visits, been scheduled, and
2 have you been accommodated by these visits occurring during
3 this period of time, June 14, '09 through today?

4 A No. Like I said, there's always a reason. If Haas is on
5 vacation, I don't get a visit. The agent doesn't come, I
6 don't get a visit. There's always a reason that I hear later
7 'cause I rarely get my social calls to find out why my mother
8 didn't come. They never tell me she's not coming or she
9 couldn't make it.

10 I don't know until she comes to the visit why she didn't
11 come last visit. So you have to ask her.

12 Q Do you have any opportunity to use the telephone at the
13 MCC?

14 A When I'm allowed.

15 Q All right. Per month, when are you typically allowed to
16 use the phone? How many times per month?

17 A In ADX we had them twice a month, but here it's once a
18 month. MCC's once a month.

19 Q And do you always get your once a month telephone call?

20 A No. They always late, but I got my June phone call
21 coincidentally two days before I came to court 'cause he heard
22 me complain to my mother that I was going to address it with
23 the Court and with my lawyers, and I got my phone call three
24 hours later.

25 Q Has there ever been a month that you've been housed at

1 the MCC where you did not have a telephone call to your
2 family?

3 A A few of them.

4 Q Okay. Has there ever been a month where -- when you've
5 been housed at the MCC where your social visit did not occur?

6 A Few of them.

7 Q Moving forward to your access to newspapers, periodicals,
8 reading materials and books, do you routinely get updated and
9 current newspapers at the MCC?

10 A Get them, like I said, maybe two to three weeks,
11 sometimes a month late.

12 Q Do you -- are you permitted to receive books from your
13 family?

14 A I was, but now they got some new restriction. The SAMS
15 says no books pertaining to violence or terrorism. My family
16 sent me books on psychology and a regular book that's well
17 known throughout the system, *The 48 Laws of Power*. They
18 denied it, and when I asked the warden and captain why they
19 deny it, said Kevin Lewis, the agent, denied it. It was out
20 of their hands.

21 They just impose the SAMS. It's not up to them to
22 deny periodicals, what I can read and not, but they denied a
23 few books.

24 They denied newspapers. I was getting a paper out of
25 Oakland, the Oakland Bay Review. They denied that paper, just

1 flat out said I couldn't have it. No reason, nothing.

2 They denied letters from my attorneys. They denied
3 letters from my family. Had nothing to do with anything in my
4 indictment. I'm not allowed to speak to certain people, my
5 kids' mothers. It's been four years since I spoken to a few
6 of them. They won't allow me to speak to them.

7 Q Okay. Let's move forward to your access to the law
8 library at the MCC. Can you tell the Court what books you're
9 able to look at, legal books, periodicals pertaining to law,
10 things of that sort, at the MCC?

11 A None. I can't -- they don't give me social books, legal
12 books. I can't have any books.

13 Q I want to talk specifically about legal books, law
14 library stuff.

15 A None.

16 Q Is there a law library?

17 A Yes, on 9 South, but since I'm on 10 South, terrorists
18 can't go down there, so I'm -- I can't get those books. I
19 can't have those books.

20 Q Have you ever seen a law book since you've been housed at
21 the MCC?

22 A No.

23 Q Have you ever been given access to a room that has law
24 books at the MCC?

25 A No.

1 Q Have -- the library or the room that you go to at the
2 MCC, other than yourself, is there a room with a computer that
3 you have access to?

4 A Yes.

5 Q Are there law books in that room?

6 A No.

7 Q Is there any law periodical or written word anywhere in
8 that particular cell?

9 A None.

10 Q Where is that cell at the MCC? What floor and what unit?

11 A It's on 10 South. It's the first cell you see getting on
12 the block. It's -- it's a visiting room, but it's also the
13 barber shop.

14 It's also legal visits, for legal visits, social visits.

15 A visit -- those rooms are used for anything.

16 That's why -- the computers, they didn't -- that
17 particular computer didn't get in there till June of this
18 year.

19 Q Of 2010.

20 A Yes.

21 Q So when you went to that room before, 'cause you've been
22 there since May of -- I'm sorry, June of 2009 --

23 A Yeah.

24 Q -- when you went to that room before the computer got
25 there for the full year --

1 A Yes.

2 Q -- what was in there?

3 A Nothing, just a chair for visits, legal or social.

4 Q Are you able to conduct any legal research on your own at
5 the MCC?

6 A Well, now they have the computers, but the computers are
7 in the visiting cells, and those terrorists, they get visits
8 from the counselors. Ghailani has military attorneys and
9 civilian attorneys.

10 Those guys have attorneys that's constantly up there, and
11 they're stationed in New York. So they're constantly getting
12 visits, if not in the barber shop, if not a social visit. So
13 I'm never, never allowed to get in that library.

14 Last time I was they shook my cell down. I got in there
15 by default. I says, "Since I'm in here, you might as well let
16 me stay in here." He let me stay in there for a hour.

17 Q All right.

18 A Two hours.

19 Q When we say the computer, what programs are on -- strike
20 that.

21 Are there legal databases like WestLaw and Nexus on this
22 computer that you're using?

23 A I believe that particular one is Nexus.

24 Q So you have that on the computer?

25 A It's on there. I don't have it, but it's on there, yes.

1 Q What do you mean, you don't have it? You -- can you
2 access it?

3 A Yeah, you got to access your PIN registration number to
4 get to access the law library, 'cause they also -- I guess how
5 they have it set up, they do emails for their regular inmates,
6 they email or whatever, so I push my PIN code in, and it says
7 law library, emails, whatever. I push law library. The
8 screen comes up.

9 Q All right. And are you allowed to do -- I mean can you
10 at that point do legal research in that Lexus?

11 A Yes, but I can't get copies of anything. So anything in
12 there -- if a case law I need, I got to write it down by hand.

13 Q So it doesn't enable you to print out a case?

14 A No.

15 Q All right.

16 A Not in 10 South.

17 Q How many times --

18 A They can't do it.

19 Q How many times since June of 2010 when that computer got
20 to that room that you described through today, the four months
21 that it's been there, how many times have you been in there
22 using the computer and accessing that law database that you've
23 described?

24 A Twice.

25 Q How many times have you been able to print cases from

1 there to take back to your cell?

2 A None, not at all.

3 Q Are the two times that you've described for the Court
4 about using a law database the only two times that you've
5 accessed law materials at the MCC since June 14 of 2009?

6 A Yes.

7 Q Now, I want to talk to you about your ability at that
8 facility to talk to your attorneys.

9 Now, in short, you and I have been able to meet there, is
10 that fair to say?

11 A Yes.

12 Q Mr. Sullivan and his associate, Brett Cooke, have been
13 able to meet with you there?

14 Q Are we having face-to-face visits at any time?

15 A No.

16 Q So there's no contact attorney visits, right?

17 A None.

18 Q Correct?

19 A Yes.

20 Q All right. And in terms of being able to communicate
21 with your lawyer, myself, Mr. Sullivan and Mr. Cooke, we speak
22 through a metal mesh window, is that right?

23 A Yes.

24 Q And in -- in order for me to hand you a piece of paper,
25 we have to knock on the door, get a guard to receive it, open

1 the door and then transmit or give that to you in your cell.

2 A Yes.

3 Q There's no handing paper back and forth.

4 A None.

5 Q And by way of background, our office has copied for you
6 the thousands and thousands of pages of discovery and
7 transcripts and sent them to you at the MCC.

8 A Yes. I -- I've never seen them, but if I ask for them, I
9 get them. They keep them in Haas' office. They stay in his
10 office, and his office is the only office that doesn't have a
11 camera in it, so he keeps them in his office. I'm only
12 allowed to get them from a lieutenant, and that might take a
13 week or two to get it.

14 So you -- you sent those to me in June. I may have seen
15 my last box a month ago.

16 Q All right. We sent you about 13 separate boxes.

17 A Yes.

18 Q About seven months ago.

19 A Yes.

20 Q Have you now reviewed all 13 boxes?

21 A Yes. Now yes.

22 Q All right.

23 A But I'm not allowed --

24 Q Are they --

25 A -- to keep them in my cell. I have to give them back.

1 I'm allowed one -- one box at a time.

2 Q I see. Have you ever asked to have all of that paperwork
3 in your cell at one time?

4 A Certainly. Once I found out they was in Haas' cell, I
5 asked him, "What -- what does he want with my legal work?"

6 He said I couldn't have it. He didn't want them in my
7 cell.

8 Q Have you been given a reason why you can't have all of
9 those boxes in your cell at one time?

10 A Basically, 'cause he said so. They didn't want me to
11 have it. It's mine, but I can't have it.

12 Q Let's talk about your ability to talk to us.

13 Are you of the mindset that you can freely discuss openly
14 the strategy in your criminal case, the strategy of our
15 defense and -- and the strategy of pursuing mitigation with
16 Mr. Sullivan?

17 A No, I won't discuss anything 'cause I know they're
18 listening. I won't discuss anything about anything pertaining
19 to this case, my last case or any other case.

20 Q Why do you feel that they're listening? What has given
21 you proof, if any, that they've been listening or reading or
22 looking into what you and I and Mr. Sullivan have been
23 discussing?

24 A Their history with Lynn Stewart bugging her attorney-
25 client privilege visits, my -- my history with with them, them

1 bugging my cell in my visits, and the cameras in the cell, and
2 it -- the microphone there, and I know they're listening.

3 Q Now, you indicated the history of your cell being bugged.

4 Are you referring to the interception of your discussions
5 and conversations at the Federal Detention Center pursuant to
6 a Title 3 wiretap?

7 A Yes.

8 Q Are you aware of any such interception occurring at the
9 MCC? I mean do you have a factual basis --

10 A Yes, Lynn Stewart --

11 Q -- upon which you can conclude that?

12 A Lynn Stewart, what I believe the (inaudible), and she was
13 charged with baiting [sic] and abetting terrorists.

14 Q Do you understand the SAMS restrictions also suggest to
15 you that your conversations are monitored?

16 A SAMS restrictions don't say anything, but yes.

17 Q Okay. So when we meet, you and I and Mr. Sullivan on
18 various occasions, and we've met probably ten times over the
19 last eight months, is it your testimony today, Mr. Savage,
20 that you don't feel confident in your ability to openly
21 discuss the strategy and the nuances of your defense?

22 A At all, and I refuse to say anything in that cell.

23 Q Is there a second manner of communication that your
24 attorneys have undertaken with you through the mail?

25 A Yes.

1 Q Have you gotten letters from us?

2 A A few, late, but I -- I get them.

3 Q Let's first talk about the method by -- let's talk about
4 the method by which you receive mail at the MCC.

5 If I mailed you a letter on September 1st that got to the
6 MCC on September 2nd, when, if at all, do you typically receive
7 that letter that was mailed on the 1st, received by them on the
8 2nd?

9 A Depends, the 15th or October 1st. It depends. At least --
10 at least two to three weeks later.

11 Q Have you been told why your mail was being held?

12 A It's the process, 10 South process, I was told.

13 Q And when you receive letters that are marked, "Special
14 Mail, Open in the Presence of Inmate," from perhaps Mr.
15 Sullivan's office, have you ever received a letter where the
16 envelope was fully sealed and unopened?

17 A Never. They're all opened and read.

18 Q Do you know who's opening your mail?

19 A No.

20 Q Have you --

21 A They all -- when I ask, they always pass the buck. It's
22 R&D, it's policies. I've never got a concise answer who
23 opened it, who read it.

24 Q What is the most recent piece of mail that you've
25 received there from an attorney, other than myself, Mr.

1 Sullivan -- well, strike that.

2 When is the most recent piece of mail that you've
3 received at the MCC from an attorney?

4 A Believe I got it October 8th. It was from Christopher
5 Warren about my appeal.

6 Q All right. And Christopher Warren, for the record, is
7 the attorney that represented you in the previous matter
8 before Judge McLaughlin.

9 A And my appellate case.

10 Q All right. So he's also handling the -- the appeal of
11 that conviction?

12 A Yes.

13 Q Was he communicating with you through the mail?

14 A I haven't heard from him at all. When I was on the SAMS
15 in Colorado, they refused to let him write me, and they
16 refused to let me write him, even though he was down as my
17 appellate attorney. They said he didn't sign up for the SAMS,
18 so I had no contact with Warren till I got back here and got
19 indicted.

20 And since I recuse him off this case to represent me,
21 since I've got him off the case to represent me, Judge
22 appointed me new counsel. I haven't heard anything from him
23 until he sent me those letters.

24 MR. HOEY: Your Honor, if I may approach with
25 Defense Exhibits 1 and 2, if I could.

1 (Pause in proceedings.)

2 MR. HOEY: Your Honor, if I may identify for the
3 record, Defense Exhibit 1 is a letter from Christopher Warren,
4 attorney at law, which is marked in the upper left-hand corner
5 with a Philadelphia postal mark of October 8 of 2010.

6 Defense Exhibit 2 is a letter received -- well, the
7 Southeastern Pennsylvania postal mark is October 1 of 2010.
8 It's a letter from our office indicating "Special Mail, Open
9 in the Presence of the Inmate, Authorized by Bureau Policy."

10 May I publish Exhibit 1 and 2 to the witness?

11 THE COURT: Yes, indeed.

12 BY MR. HOEY:

13 Q I'm going to show you what we've just identified on the
14 record as Defense Exhibit 1 and 2, one being the top, two
15 being on the bottom.

16 Tell the Court what number one is, when you received it,
17 and was it opened or closed?

18 A One is a letter from Christopher Warren dated October 8th,
19 and it was open when I received it.

20 Q When you say it was open, what -- what do you mean, open?
21 Was the envelope sealed, torn?

22 A Open. Exactly how you see it now is how I received it.

23 Q You're holding up the envelope without the letter in it
24 that --

25 A Yes.

1 Q -- appears to have the top of the envelope torn off?

2 A Yes. The letter was inside the envelope, but this
3 particular envelope was open as you see it here.

4 Q So the condition that you have it in today is the
5 condition that you received it from the prison
6 administration --

7 A Yes.

8 Q -- is that fair to say?

9 A Yes.

10 Q Did they open it in your presence?

11 A No.

12 Q Did they tell you why it was open?

13 A No.

14 Q Okay. Exhibit 2 is what?

15 A This is a letter from -- from you, Christopher Hoey.

16 Q All right. And what is the postal mark? What is the
17 date on the postal mark, October 1?

18 A October 1, but this particular date -- you dated
19 September 9th.

20 Q Okay.

21 A And I didn't get this till the same day I got this
22 October 8th. So I got this 31 days later.

23 Q Now, that -- that envelope, was that open or closed when
24 you received the letter?

25 A Open. Each and every last one of them were open.

1 Q Is Exhibit 2 marked on the outside of the envelope,
2 "Inmate Mail, Legal Mail, Open in the Presence of the Inmate?"

3 A Yes.

4 Q Was it opened in your presence?

5 A No.

6 Q Have those two letters being opened outside of your
7 presence caused you any concern regarding your ability to
8 effectively communicate your defense strategy with your
9 attorneys?

10 A No question, 'cause I know they're going to keep opening
11 them.

12 Q Do you feel that they're reading your mail?

13 A I know they're reading. It's not that I feel; I know it.

14 Q Do they read --

15 A I can't seal any letters leaving my cell. They got
16 cameras. They got them on video. There's nothing -- they got
17 evidence that we can use in our favor.

18 When I send a letter out of that door, stick it in the
19 door for them to pick it up, I'm not allowed to seal it. So,
20 of course, they read it. I'm not allowed to -- to the Courts,
21 anywhere.

22 Q Well, have -- are you sending letters to your lawyers?

23 A I sent you a few, and I sent the Courts a few.

24 Q Do you -- do you feel that the letters that you're
25 sending to your lawyers are also being reviewed?

1 A Absolutely.

2 Q What evidence do you have to suggest that that is true?

3 A If I seal a letter to anybody, it won't go out. So only
4 way I can get it to the mailbox, to the UPS man, the Federal
5 Express man, the postal department, if I send it out similar
6 to this, open, they seal it.

7 So, of course, if it's open, they're going to read it.

8 Q Do you know why they don't want it sealed?

9 A Yeah, they want to read my mail.

10 Q Do you know that the SAMS restrictions permit them to
11 read your mail prior to it leaving the institution?

12 A The SAMS is vague when it says -- it says -- I can't
13 remember verbatim, but it says they can and it says they
14 can't, but another part of SAMS says you are allowed to
15 contact senators, congress and the courts without
16 interference, but that's a lie, too.

17 Q Now, the method of unsealing the envelope and presenting
18 it to an administrator in an unsealed fashion, is that the
19 same for your legal mail, meaning when you write me a letter
20 or you write Mr. Sullivan or Mr. Cooke a letter, you have to
21 leave it unsealed?

22 A I write anybody. I write the President, the Judge, I
23 have to leave it unsealed. If I stick it out that door, if
24 it's sealed, they won't take it. The guards won't take it,
25 but Haas or A.W., they walk past, they'll it, but I know

1 they're going to open it again, anyway.

2 So I don't waste my time -- so the process can be
3 hurried, I don't waste my time sealing any of them.

4 MR. HOEY: Your Honor, if I could approach the
5 witness with some additional exhibits?

6 THE COURT: Yes.

7 MR. HOEY: Your Honor, I have two separate exhibits
8 which I'd ask be marked Defense Exhibits 3 and 4.

9 Defense Exhibit 3, for the record, is a -- an
10 envelope from the Law Offices of Timothy J. Sullivan, which
11 has a postal mark date of September 3 of 2010.

12 It's an envelope and a letter marked "Special Mail,
13 Open in the Presence of Inmate" on the outside of the
14 envelope.

15 I have as Exhibit 4 a three-page stapled collection
16 of letters received by the inmate at the MCC, all from the Law
17 Offices of Timothy Sullivan, all noted to be special mail,
18 open in the presence of the inmate.

19 The dates on those letters, for the record, January
20 5, 2010, January 4, 2010 and July 14 of 2010. That
21 collectively would be Exhibit 4. Defense Exhibit 3 would be
22 the single letter.

23 THE COURT: Right.

24 MR. HOEY: May I approach?

25 THE COURT: Yes.

1 BY MR. HOEY:

2 Q Mr. Savage, I'm going to show you Exhibits 3 and 4,
3 three, being on the top, four being on the bottom.

4 Can you tell the Court what Exhibit 3 is, please?

5 A Three is a letter from Tim Sullivan dated September 3rd of
6 this year, 2010.

7 Q All right. That is an envelope that appears to be torn
8 open, is that correct?

9 A Yes.

10 Q All right. Was I present in your unit on 10 South when
11 you received that mail roughly September 14th --

12 A Yes, you were sitting --

13 Q -- 2010?

14 A You were sitting across from me in that visiting booth.

15 Q Was it handed to you during that -- that visit?

16 A Yes, in your presence.

17 Q Was it opened when it was handed to you during that
18 visit?

19 A Yes, and this letter was outside the envelope that
20 particular instance.

21 Q Now, that is a letter from Mr. Sullivan to you?

22 A Yes.

23 Q Now, you were here at the last hearing when the
24 Government indicated that they had contacted the
25 administration there and told them to refrain from opening

1 legal mail? Do you recall that particular discussion?

2 A There's a few of them. Happened in February, the Judge
3 said something about it, so --

4 Q Right.

5 A -- which particular time?

6 Q So there's been a couple occasions you've been in this
7 courtroom where the mail issue has been raised.

8 A Absolutely.

9 Q Since it was raised the last time on October 4 of 2010
10 here in the courtroom, I believe was the last date, have you
11 subsequently received legal mail from attorneys that was
12 opened outside of your presence and handed to you in an opened
13 state?

14 A Yes, and from the Courts. October 8th I received it. My
15 last court date was what, September 20th? September 20th, I
16 believe, right? September 30. October 8th. I don't see them
17 up there, but October 8th, this one. Yeah, October 8th, and
18 this one I got on October 8th, but it's marked October 1st.

19 Q The collection of three letters that I gave you, January
20 4, January 5 of 2010 and July 14 of 2010 --

21 A Yes.

22 Q -- are they all collectively letters from Mr. Sullivan
23 that have been marked "Special Mail, Open in the Presence of
24 Inmate," all three of them?

25 A Yes, and it says it on here, "Opened as general

1 correspondence which special mail requires.

2 Q Are those --

3 A They stamp it telling you they opened.

4 Q All right. So there is a stamp on each of those letters.
5 Could you read that into the record, please?

6 A "Notice, opened as general correspondence for special
7 mail requirements" --

8 Q Was that stamped on that envelope and the envelope opened
9 when you received the letter from the administration?

10 A Yes, on each and every last one.

11 Q Can you also read the end where it says, see 28 CFR?

12 A Yeah, see 28 CFR 540.19.

13 Q All right. Do you know whether or not that particular
14 regulation section corresponds with SAMS restrictions that
15 permit mail to be opened prior to giving it to the inmate?

16 A If I read it right, it's for social mail, not legal mail.

17 Q I see.

18 MR. HOEY: One moment, please, Your Honor?

19 THE COURT: Yes.

20 (Pause in proceedings.)

21 BY MR. HOEY:

22 Q Have you asked the administration at the MCC why it is
23 that they're opening your legal mail prior to you receiving it
24 outside of your presence?

25 A At first it was an ongoing issue, continuously, but I

1 gave up since then 'cause it's going to happen, regardless, so
2 what's the sense of keep complaining if it's going to keep
3 happening?

4 Q Did you receive any particular verbal response from a
5 member of the staff there regarding this legal mail issue?

6 A From a few. I got one from the warden directly, saying
7 anything that comes to 10 South they're going to read. They
8 don't care about a Judge, anybody.

9 If it comes up there, they read it, and I got one from
10 the counselor, the same lady that handed me the mail in front
11 of you, 'cause after you left, I said, "You know that was my
12 lawyer." She said, "I don't care. This is how 10 South
13 mail -- this is how it's conducted."

14 Q When you have meetings with your attorneys, myself, Mr.
15 Sullivan, how far away are the guards from this door where --
16 where you discuss your case on 10 South?

17 A Five feet, six feet.

18 Q Is there a desk in that particular unit where these staff
19 members sit and -- and watch the unit?

20 A Yeah, they sit and watch the cameras at each cell.

21 Q All right. And is that desk just outside the door of
22 that particular room where you meet with your attorneys?

23 A Right outside.

24 Q And is there typically a staff member at that desk?

25 A Two. Well, they're supposed to do 15-minute rounds,

1 periodically, every 15 minutes. So one is sitting watching
2 the camera, and one takes his walk.

3 Q Have you explored with Mr. Sullivan the opportunities to
4 meet with experts and mitigation specialists at the MCC?

5 A I'm not -- I've refused. I'm not letting my family get
6 involved in this process for mitigation, for psychological --
7 they're going to mention me, they're going to mention me
8 without my cooperation so they can say I exhausted all my
9 administrative remedies, I had effective since there's
10 counsel. I'm not taking part in this charade --

11 Q Well --

12 A -- so I've refused to discuss it, let my family discuss
13 it. We're not playing this game.

14 Q Why are you refusing to meet with these folks at the MCC
15 in New York?

16 A It's being monitored. Anything I say, they get first-
17 hand knowledge. It's like I might as well talk to them, they
18 might as well come up here and talk to me themselves.

19 Q Have you lost confidence in the ability to communicate
20 with your attorneys through the mail and in person at the MCC?

21 A Absolutely, years ago.

22 Q The Court has graciously afforded us an opportunity to
23 meet with you in the Federal Detention Center here in
24 Philadelphia.

25 A Yes.

1 Q You were brought down on a couple of occasions to meet
2 with your attorneys in an open cell where the windows were
3 open, and we could pass paperwork.

4 A Once, April -- April 19th to 21st, for two days.

5 Q Where were you housed when you came down on those
6 particular dates?

7 A That suicide cell right next to that visiting room.

8 Q This suicide cell, does it have a toilet and running
9 water?

10 A No.

11 Q Does it have a sink?

12 A No.

13 Q Is the light on all night?

14 A Constantly, two bright lights. If I have to go to --

15 Q Do you have the ability to rest or get sleep prior to
16 meeting with your lawyers?

17 A How can you? I pace all night. I'm up all night. If I
18 have to use the bathroom -- if I have to have a bowel
19 movement, they keep me cuffed. I can't wipe myself if -- they
20 keep me cuffed as I am now if I go to the bathroom, if they
21 take me out. So going to the bathroom is at -- is not a
22 option --

23 Q Wait a minute.

24 A -- but they'll give me urinal to urinate.

25 Q I'll -- we'll get there in a second. I want to talk to

1 you about the cell itself, the arrangements.

2 You come down here from the MCC. Are you able to bring
3 the boxes of discovery that we mailed you?

4 A One box. I'm limited to one box. They said I could
5 bring one box.

6 Q And are you able to sleep at night and rest and prepare
7 for your meeting with your attorneys?

8 A No. How can you sleep with a light on that stays 24
9 hours? Want one of them to try.

10 Q Do you have any ability --

11 A You can't.

12 Q -- to use -- strike that.

13 You mentioned having to go to the bathroom on that
14 particular block, in that particular cell.

15 A No, I don't go to bathroom in that block in that cell.
16 They take me to the SHU cells, the regular 8 South -- 8 North
17 cells, to use the bathroom.

18 Q And is -- is this arrangement in place today? Meaning
19 you came down yesterday, is this where you've been staying?

20 A Eleven o'clock yesterday I got here. They fed me. Told
21 them I had to go to the bathroom about 4:00 o'clock. They
22 asked me what -- what I had to do. I said a bowel movement.
23 They said, "We'll get the lieutenant." Lieutenant left, never
24 seen another lieutenant.

25 I asked all night. This morning they finally came to get

1 me, said I to go to the bathroom. Said, "You know you got --
2 you're staying cuffed."

3 The last lieutenant, I forget his name, he took one cuff
4 off, as I am now, so I could wipe myself. This guy, Tybo,
5 Tibu (phonetic), whatever his name was, he said I had to stay
6 cuffed, and they had to stand at the door with the door open.
7 How can I go to the bathroom like this? So I had to wait till
8 I got over here to go to the bathroom, till the marshals took
9 the cuffs off, put me in a cell.

10 Q But you were not provided an opportunity to -- to use
11 basic hygiene at the FDC.

12 A No. Well, I did do that this morning, cuffed.

13 Q Here.

14 A No. At the -- at the FDC. I refused to have the bowel
15 movement, but I did wash my face and brush my teeth, cuffed up
16 as I am now, with both cuffs on.

17 Q Are there any other inmates within that psych unit or --
18 or occupying any other cells on that block that you've just
19 described?

20 A No. Across from that cell's the lieutenant's office.
21 Maybe 12, 15 feet from there is the officers' station, three
22 of them sitting there all night.

23 They're in there all night loud, playing the radio, so
24 how can I sleep, on top of the lights? I'm right next to
25 where they stay at. They have the computer loud or they're

1 playing the radio loud all night long.

2 Q Are you able to get to the law library when you've been
3 here sporadically at the FDC?

4 A No.

5 Q Have you been effectively able to meet with your
6 attorneys here at the FDC?

7 In your -- in your words, we all know that you've refused
8 to come down here to the FDC. Why are you doing that?

9 A 'Cause of the conditions I'm under. What's the sense of
10 coming down here? I can't sleep. They don't feed me right.
11 Can't go to the bathroom, can't have a bowel movement. If I
12 get a urinal, I got to use this dirty, filthy urinal. They
13 don't give me anything to wash my hands with. I rarely get
14 water, barely get it.

15 What's the sense of coming down to be placed in those
16 inhumane -- I could stay up there. What's the sense of coming
17 down here? Then I know they monitor those visits, too. That
18 same cell, I believe I was bugged on my social visit the last
19 time I went to trial.

20 Q Do you think you're being recorded at the FDC?

21 A Absolutely. Absolutely.

22 Q In -- in both your cell and in the attorney meeting room?

23 A Not the -- I wouldn't go as far as the cell, but the
24 attorney visit room, without question. I was bugged in those
25 booths already.

1 MR. HOEY: Your Honor, I have no other questions of
2 Mr. Savage at this time.

3 THE COURT: Mr. Troyer.

4 MR. TROYER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. TROYER:

7 Q Mr. Savage, you're currently designated to ADX in
8 Colorado as part of your -- to -- to do your 30-year sentence,
9 is that right?

10 A Wasn't designated there. You placed me there. I was
11 designated to Atlanta.

12 Q All right. But you're currently designated now to ADX,
13 isn't that right?

14 A I'm in MCC. I don't know where I'm designated.

15 Q Okay. Now, you claim that when you're in MCC, the
16 light's on all night, is that right?

17 A Yes.

18 Q Okay.

19 A Not a claim, it's a fact.

20 Q All right. And you have a -- you are afforded sheets,
21 blankets, is that right, to keep yourself warm while you
22 sleep?

23 A Yes.

24 Q Okay. And you can -- you pull the blanket up over your
25 head so you can keep the light out of your eyes, sir?

1 A No. It's called carbon dioxide. I would suffocate.
2 It'd kill you. You can't do that with a blanket.

3 Q All right. So you also were talking earlier about your
4 2005 conviction and about how you weren't able to file any
5 motions or do any legal research for that, right? That's what
6 you were saying?

7 A After I was convicted, yes.

8 Q Right. Okay.

9 A And previous, prior to.

10 Q All right. But currently that conviction's now been
11 affirmed on appeal, you're aware, right?

12 A Well, I just found out.

13 Q All right. All right. So you don't have any legal --

14 A This -- the --

15 Q -- efforts you have to make at this time on that, do you?

16 A It just got affirmed a week ago. He filed it. I didn't
17 know about him filing it 'cause they've been rejecting my
18 letters from --

19 Q All right.

20 A -- from him to me.

21 Q All right. Now, after you were indicted in this case,
22 you were -- you were brought initially here to Philadelphia,
23 right, for your initial appearance and arraignment, correct?

24 A Well, after the travels to -- traversing from Seattle to
25 Oklahoma, yes.

1 Q Okay. And then instead of going -- being sent back out
2 to Colorado, you were sent to New York instead, right?

3 A Yes.

4 Q Okay. And you're aware that that was part of -- that the
5 reason for that was part of efforts that were made by your
6 attorney, or your previous attorney, talking to us to keep you
7 closer to Philadelphia so you could visit with your lawyers,
8 right?

9 A I wasn't aware. He never told me. I would have asked to
10 go back to Colorado before I stayed under those conditions.

11 Q Excuse me. Say that again.

12 A I wasn't aware of a deal he made with you or the Courts,
13 whatever. I would have asked to go back to Colorado before I
14 was placed under those conditions.

15 Q Well, as you sit here today, is that your preference?
16 Would you rather go back to Colorado?

17 A Before I sit in MCC? Well, certainly, and I don't want a
18 attorney.

19 If they send me back to Colorado, I'm going *pro se*
20 because what's the chance of them traversing back and forth
21 across the country to see me and get effective legal
22 assistance?

23 Q Okay. Now, the fact is you were -- you are aware,
24 though, that there have been meetings with your lawyers,
25 including -- including Mr. Sullivan, your previous lawyer and

1 us where we worked out something where you would be able to be
2 brought back down to Philadelphia for contact visits, correct?

3 A Yes.

4 Q Okay. Because when you are at MCC in New York, you could
5 have visits with your lawyers, right?

6 A If that's what you want to call them.

7 Q All right. Well, you were able to -- to see your lawyer,
8 correct?

9 A Visually, yes.

10 Q You were able to talk to your lawyer, right?

11 A No.

12 Q Well, could you hear what your lawyer was saying to you?

13 A I don't want to hear. I have nothing to talk to him
14 about as long as I'm under those conditions.

15 Q That's not my question. When your attorneys speak, would
16 speak to you in MCC New York --

17 A We don't speak.

18 Q -- can you hear him?

19 A We don't speak. I can hear him, but we don't speak.

20 Q All right. So you're saying that your attorneys show up
21 at MCC New York, sit in a room across from you and say
22 absolutely nothing.

23 A We talk sports.

24 Q That's all you talk about.

25 A How you doing, hello and sports.

1 Q Okay. So your testimony is that your attorneys have
2 never tried to talk to you about your case in MCC New York.

3 A Trust me, they've tried, but to no avail. I refuse to
4 discuss it.

5 Q Aha. So the reason that you don't talk about your case
6 in MCC New York is because you refuse to talk about it with
7 them, right?

8 A Absolutely.

9 Q Okay. And you say that the reason for that is because
10 you think your conversations with your lawyers are being
11 monitored?

12 A I know they are.

13 Q All right. And you say you -- you say you know they are.

14 A I assume.

15 Q You're assuming.

16 A Yeah, I presume.

17 Q So you really don't know, Mr. Savage?

18 A Not with absolute certainty.

19 Q All right. Now, you're aware, aren't you, Mr. Savage,
20 that in the SAMS order -- you've read the SAMS order, right?

21 A Which one? There's five different ones. They all have
22 different language.

23 Q Well, let's go with the most recent one, the one that
24 pertains today. Okay?

25 A Okay.

1 Q All right. So in that SAMS order you're aware that
2 there's no provision in the SAMS order for you to -- for your
3 conversations with your lawyers to be monitored, correct?

4 A It doesn't say it, but they -- they do it, anyway. The
5 monitor them, anyway. It doesn't say it overtly.

6 Q So -- so the SAMS order does not say that your
7 conversations with your lawyers can be monitored or
8 recorded --

9 A No.

10 Q -- does it?

11 A No.

12 Q Okay. But you're assuming that they are, anyhow, right?

13 A I know they are monitored. There's a camera in there.
14 They don't turn the camera off.

15 Q Well, are you worried about somebody seeing you meeting
16 with your lawyers?

17 A Reading my lips. They have lip readers. That's just the
18 Government.

19 Q Right.

20 A What don't they have? They can see a snake in Iraq.

21 Q But --

22 A Think they can't -- somebody read my lips, my attorney
23 lips?

24 Q Are you really worried about people reading your lips?

25 A No question. I'm -- I'm scared. I'm frightened. I'm

1 schizophrenic. I don't trust the Government.

2 Q All right. Mr. Savage, you are aware, aren't you, that
3 in order for people to listen otherwise to your conversations,
4 especially conversations with your lawyers, there would have
5 to be an order signed by a Judge permitting this under --
6 under Title 3, right?

7 A They can say anything to get that order. They're allowed
8 to get that order. I don't know. It's -- it's capable of
9 getting a wiretap, anything.

10 Q All right. And you're aware that an order's required
11 because in fact you've received such orders in this very case
12 in your discovery, right?

13 A Yes, with lies. That's why I know, the caveat, with
14 lies, getting those wiretaps, they'll say anything to a Judge.

15 Q All right. Now, so basically, based on your assumptions
16 or your beliefs, is it fair to say you have refused to talk
17 about your case in MCC New York with your attorneys?

18 A My beliefs, absolutely.

19 Q Okay. And as part of this -- this deal to have contact
20 visits, your -- you have refused to come down to Philadelphia
21 to have those contact visits with your lawyers, haven't you?

22 A Once.

23 Q Okay. Well, in fact, how many contact visits have you
24 had down in Philadelphia here?

25 A One.

1 Q You've had one.

2 A One.

3 Q Okay. And in fact, the -- the arrangement is -- the
4 arrangement between the attorneys, the Government, Bureau of
5 Prisons and -- and blessed by this Court, if I may say -- use
6 those words --

7 A Blessed to who?

8 Q -- that -- that you're supposed to be able to come down
9 here once a month, right?

10 A Yes.

11 Q All right. And in fact you're allowed to come down here
12 once a month, but you've refused to come down on all those
13 other occasions, right?

14 A There's only one other occasion I refused. Where do you
15 get -- "all those?" All those -- you're saying there was many
16 of them, all. Once.

17 Q So --

18 A I refused once.

19 Q So you've refused to come down here.

20 A Once, yes, absolutely.

21 Q And you say the reason you refuse is 'cause you don't
22 like the cell that you're put in in FDC.

23 A Yeah, I refuse to basically submit to those inhumane
24 slave's conditions. I'd rather stay at the MCC. I'd rather
25 not have an attorney if I got to go through that.

1 Q Okay. Fact is, Mr. Savage, you -- and you did make a
2 complaint to FDC about those conditions, didn't you?

3 A No question.

4 Q Okay. And your -- and you received back a response from
5 the FDC warden here in Philadelphia, didn't you?

6 A Well, I received a response from the warden at MCC, but I
7 would assume it was from the warden in FDC.

8 Q Okay. And that response explained that the reason -- it
9 gave you a reason for -- for putting you in a cell without a
10 flushing toilet facility, didn't it?

11 A No.

12 Q Wasn't it true that the response that you received back
13 was that you were not permitted to have those facilities
14 because you had previously abused those by communicating
15 threats through the toilet system?

16 A It said -- if I remember correctly, said because I was
17 under SAMS, then at the end of it it said I used the toilet to
18 communicate, which everybody does in that facility.

19 Q Okay. In fact --

20 A It's not exclusive to me.

21 Q Fact is you're not being denied water.

22 A Yes, I am.

23 Q Right?

24 A Yes, I am.

25 Q So -- well, if you -- if you didn't have water, you --

1 you'd die, wouldn't you?

2 A I was on the way to dying. You see the episode I had
3 last time.

4 I didn't eat, didn't have a bowel movement. They didn't
5 feed me, didn't give me water, anything.

6 Q Yeah, let's talk about last time. Isn't it true you had
7 breakfast that day?

8 A No, I didn't.

9 Q All right. So you deny that.

10 A Absolutely. With certainty.

11 Q All right. You had breakfast this morning, too, didn't
12 you?

13 A Yes. A bagel.

14 Q A bagel?

15 A The cereal's still in the cell. A bagel.

16 Q A bagel and --

17 A Half a bagel.

18 Q Half a bagel and what else?

19 A And this particular guard this morning gave me water.

20 Q Okay. Nothing other than a bagel and water?

21 A Nothing.

22 Q You're sure about that.

23 A I'm positive.

24 Q Okay. Now, fact is also when you need to use the
25 restroom, when you need to use the toilet facilities, you've

1 been permitted to do that, right?

2 A Not in every instance. I got to wait for the lieutenant
3 to come up. That takes four or five hours sometimes, as it
4 did today. I've been asking since last night.

5 Q All right. Well, pardon the messiness of this question,
6 but the fact is you -- you've never had any kind of accident
7 as a result of the -- of what you're complaining about, have
8 you?

9 A Due to my ability to hold my bowels, no.

10 Q Okay. All right. Now, you brought up the issue about
11 the legal mail, as well, at MCC New York, correct?

12 A No. You never talked about me being cuffed when I have
13 to use my bowel, when I want to use my bowel. You keep me
14 cuffed. How can I wipe myself?

15 Q Would you like to suggest questions for me? Is that --

16 A We --

17 THE COURT: Counsel --

18 MR. HOEY: Objection.

19 MR. TROYER: Okay. All right.

20 THE COURT: Counsel --

21 MR. TROYER: Okay. All right.

22 BY MR. TROYER:

23 Q Well, let me -- let me talk about legal mail for a
24 moment, Mr. Savage, if I might.

25 A Please.

1 Q Okay. Yes. All right. Now, you've -- you've complained
2 about the legal mail previously being opened, correct?

3 A Yes.

4 Q All right. Now, you were in court here the last time
5 when we discussed that issue, didn't you?

6 A Yes, a few cases. It wasn't just last time. It was
7 prior to -- if I remember correctly, since February 18th of
8 this year.

9 Q All right. Let -- my question is about last time. You
10 recall it being brought up last time, correct?

11 A Yes.

12 Q Last -- last month, in fact.

13 A Yes.

14 Q Right? Okay. And when it was brought up, you heard me,
15 you heard this Assistant U.S. Attorney tell the Court in this
16 very courtroom that that issue had been addressed, and that
17 there had been changes made as a result, correct?

18 A I heard you say that prior to, but, yes. Last time, yes.

19 Q Okay. And you actually -- do you remember that we
20 actually -- the Government even submitted an exhibit, an
21 email --

22 A Yes.

23 Q -- that had been given from Kenneth B. Haas to us --

24 A What was that date?

25 Q -- and it's dated September 28, 2010, 5:45 p.m. Have you

1 reviewed that?

2 A Yes. September 28th, yes.

3 Q Okay. And in that email it -- it acknowledges some
4 recent problems and issues, right?

5 A Again.

6 Q And it says:

7 "Specifically, starting now we will not open any
8 mail that we believe could be legal until the envelope is
9 reviewed by a lawyer in our legal department or, in their
10 absence, me. It is our hope this extra step will add a
11 higher level of review and prevent any mistakes. I'm
12 sorry our mistakes have caused problems for you, but rest
13 assured, we take any mistakes seriously and try to place
14 corrective measures in place to prevent future mistakes."

15 Okay. You've -- you're familiar with this, correct?

16 A Yes.

17 Q Okay. Now, your testimony here today is that since then,
18 even in this month, October, you've received two items that
19 you previously identified that you say were opened before they
20 came to you.

21 A Absolutely.

22 Q All right.

23 A After that letter, October 8th.

24 Q But you admit, don't you, sir, that you haven't filed any
25 complaints with regard to that, have you?

1 A For what? It's going to happen, anyway. I've been
2 through that. I've addressed it with the Court. If you're
3 going to do irregularity, disrespecting the Court, what chance
4 do I have with the MCC?

5 You don't respect the Judge's orders, so why would I
6 waste my time?

7 Q So the answer to my question is no.

8 A No, absolutely not.

9 Q All right. And in fact you haven't had this communicated
10 to the Government in any way until this very morning, did you?

11 A Surprise. I wanted to bring it in and show the Judge,
12 live and effect -- live and direct your disregard for his
13 orders after that letter. Your apology again from Haas, it
14 still happened.

15 Q All right. And the only thing you have to back that up
16 is your own word, isn't it, Mr. Savage?

17 A And a camera in the cell, your evidence. Get the camera.
18 Check it. I received it at 2:45 on October 8th. Check the
19 camera. They can rewind it.

20 Q Uh-huh.

21 A If I -- if I did something, they'd rewind it. Rewind the
22 camera, check how the mail was given to me. Thank God for
23 that camera sometimes.

24 Q You haven't -- and you haven't -- so you haven't asked
25 for any administrative remedies as a result.

1 A And I will not.

2 Q All right. Now, let's talk about your family visits.

3 You mentioned that the -- that your family, of course,
4 that is, your mother and your sister Conchetta are allowed to
5 visit you, aren't they?

6 A And not Kadada, yes.

7 Q Yes. All right. And --

8 A Why not Kadada?

9 MR. HOEY: Your Honor, if I could object at this
10 point and perhaps maybe streamline this issue.

11 I recognize the Court's order of yesterday
12 restraining this particular issue, if you will, to three
13 areas, being the legal mail consideration, the inability to
14 effectively communicate with his attorneys and the inability
15 to access the computer and law library as those things that
16 you would wish to address within this criminal case by way of
17 the -- the motion we filed.

18 We would be willing to concede at this point that
19 the personal visits, telephone calls are things that aren't
20 ripe for today or before this Court today.

21 THE COURT: Counsel, you asked many, many questions
22 down this line on direct examination, and Mr. Troyer is simply
23 inquiring in that regard. My memorandum and order was
24 focused --

25 MR. HOEY: Yes, Your Honor.

1 THE COURT: -- and your direct went beyond that
2 focus --

3 MR. HOEY: Yes, sir.

4 THE COURT: -- and we'll permit him. Go ahead.

5 MR. TROYER: All right.

6 THE WITNESS: And I agree.

7 BY MR. TROYER:

8 Q Let me just ask a few questions about this.

9 Isn't it true that -- that while your mother and your
10 sister have been allowed to visit you, the fact is that
11 they've just failed to appear at these visits, scheduled
12 visits? Isn't it true?

13 A I have visits. They come. They've missed a few, yes,
14 but they've come. I had some.

15 Q Okay. And -- and the fact is that none of thee visits
16 were cancelled by the Government or the FBI.

17 A Yes, they were. My mother's in this courtroom. You can
18 put her on. Yes, they were, and by Haas, his vacation. He's
19 on vacation. I can't get a visit.

20 Q All right. Isn't it -- isn't it true, and I really -- I
21 won't spend a lot of time on this area, but isn't it true,
22 sir, that in fact Mr. Haas himself had mentioned to you that
23 it would be a nice courtesy that when your family was planning
24 not to show up, that it would be nice for them to call the FBI
25 so that they didn't have to make the trip all the way to New

1 York?

2 A Oxyoron, us being nice to the FBI? They're not nice to
3 me. It's to required in the SAMS to tell them they're not
4 coming. If I was a regular inmate, do I have to tell the
5 facility my family's not coming? No, so why -- why go through
6 that?

7 Q And that basically -- what you just said was basically
8 your response to Mr. Haas, wasn't it?

9 A Absolutely.

10 Q Okay.

11 A That's not required in the SAMS.

12 Q So the fact is you were aware that, from Mr. Haas, that
13 there was this issue about your family not showing up and the
14 FBI agents having to come up there for nothing, wasn't there?

15 A This particular incident happened maybe a month ago.

16 Q All right.

17 A It wasn't a reoccurring incident.

18 Q All right.

19 A This happened a month ago, one time.

20 Q All right. Now, you have had -- you say there's only
21 time you're aware of that your family didn't show up?

22 A On, once when I addressed Mr. Haas, saying why waste the
23 time. It's not required in the SAMS.

24 Q Okay. In fact, you did have a visit, was it last week,
25 from Conchetta, your sister?

1 A Yes -- last week? No, the 5th, October 5th. October 5th.

2 Q All right. October 5th, and in that visit you were -- the
3 nature of that visit was you were allowed to talk to
4 Conchetta, is that correct?

5 A Yes.

6 Q Okay. And in that visit, essentially, your sister
7 Conchetta and you were using hand signals to communicate with
8 each other, weren't you?

9 A Not intentionally. We -- we're black people. We speak
10 with our hands. Get the camera. We're using hands. We're
11 not gang members. We don't -- no gang sign. So that's what
12 you're inferring. No.

13 Q So it's your testimony that no hand signals -- signals
14 were used b your sister at that visit?

15 A Not intentionally. See, this is what you think of black
16 people? That's why you won't let me see our kids.

17 I'm allowed to see her, Your Honor, but not my niece and
18 nephew.

19 This is what you think of 13 or 14-year old black kids?
20 Why do you hate black people, man? What do those kids have to
21 do with anything?

22 It's a three-year old little boy I can't see, my nephew,
23 because he's not a part of the SAMS. What can he do? He
24 throws gang signs, too? He may talk with his hands.

25 Q All right. Now, let's talk about the legal --

1 A Racist.

2 Q -- the law library and access to legal materials.

3 The -- the fact is that you are permitted access, upon
4 request, to a computer terminal that has electronic -- an
5 electronic law library, right?

6 A No, I'm not.

7 Q You deny that.

8 A Absolutely. With certainty I deny it.

9 Q Isn't it true that Mr. Haas himself has told you that you
10 have -- that you can request that, and when you need it, it
11 can be provided to you, right?

12 A Mr. Haas has nothing to do with that. It's a lieutenant
13 issue and a captain's issue, security concern. Haas has
14 nothing to do with that, so I'd never address that with Haas.

15 Q All right. And isn't it true that essentially this
16 terminal is brought to your very self, and there's a keyboard
17 that is passed through the -- the slot so that you can
18 actually use this -- this material, correct?

19 A Either he doesn't know the process, Your Honor, or he's a
20 liar.

21 The -- the computer is mounted to the floor in that
22 particular cell. So how can you take -- extract that in and
23 out of my cell? My lawyer sees it. Tim sees it. They see it
24 on the camera. When is that keyboard -- get the -- get the
25 cameras, not -- anybody up there that way. Either you're

1 making things up or you're lying.

2 Q Isn't it true that you've never requested the computer
3 terminal to be brought to you?

4 A I request it constantly. I'd do anything to get out of
5 that cell.

6 Q All right.

7 A I will email Nazi propaganda to get out of that cell.
8 They bring me a key- -- they don't bring you a keyboard. It's
9 mounted and screwed down.

10 Q All right. And you -- you complain that you weren't able
11 to print any cases.

12 A You're not allowed. The printer's not hooked up to that
13 particular computer, so how can I?

14 Q All right. Isn't it true that you can print -- upon
15 request you can print basically whatever you want to from that
16 computer.

17 A Not on 10 South.

18 Q Isn't it true that you've never made a request to have
19 anything printed?

20 A I've made many.

21 Q Really?

22 A Really. Verbally.

23 Q So you --

24 A Verbally. I refuse to waste the time with the paperwork.

25 Q Oh, so you've made only oral requests. You've never put

1 that on paper.

2 A For what?

3 Q Okay. So you base -- again, you have nothing to back
4 that up but your own word, right?

5 A And your camera. Your camera.

6 Q Okay. Now, one point earlier today you said you've
7 never -- you've not seen any discovery papers in this case.

8 A No, I said I did.

9 Q Oh, so -- so you have seen --

10 A Took me quite some time to get them. I -- I've
11 eventually got to see them, but I can't have them in my cell.
12 Why do you want Haas to hold my paperwork?

13 Q All right. Now, you're --

14 A So he can say anything and say I told him something about
15 my case?

16 Q You're claiming that the -- the papers are in Mr. Haas'
17 office?

18 A Each and every last box of my discovery's in Haas'
19 office.

20 Q Have you seen these papers in Mr. Haas' office?

21 A I could see it. I was in five cell for -- we moves every
22 21 days. I seen him in my legal work, asked him what was he
23 doing in my legal work. He said it's in his cell, it's his.
24 All of my -- everybody's legal work is in his cell.

25 Q Mr. Savage, it is true that you're allowed to have up to

1 one full box of legal materials in your cell at any given
2 time, right?

3 A Yes. I have 13 of them. So what'd he do -- held other
4 12 at?

5 Q All right. Well --

6 A There's no other room up there.

7 Q You --

8 A Somebody else's cell?

9 Q So it's true that you can review at least one box at a
10 time in your legal -- in your cell, right?

11 A Yes, I can.

12 Q In fact, you've brought -- I don't know, there's maybe
13 eight, ten, 12 inches of -- thick of legal materials --

14 A That's stuff --

15 Q -- that you brought here to Court today, right?

16 A That has nothing to do with the boxes. That's stuff that
17 I have, that I'm allowed to keep and the box, but you're
18 talking about 13 boxes. I'm allowed one at a time. Where do
19 other 12 be kept at?

20 There's no other closet up there, Your Honor, but five
21 other cells and Mr. Haas' office, no other where in this
22 particular place in 10 South to put my legal mail but Haas'
23 office. There's no closets.

24 This was a cell they made -- put together. They're metal
25 walls. They're not sheetrock, they're not cement. It's

1 metal. They got welders to put these cells together. There's
2 no other place there they could put my legal mail but Haas'
3 office.

4 Q Okay. Mr. Savage, the essence of this complaint is
5 you -- you would like to have these SAMS restrictions lifted,
6 correct?

7 A Absolutely.

8 Q Okay. And the essence of your complaint, essentially,
9 one of the problems is you're not allowed to have any
10 communications with other inmates, are you?

11 A Not by who? By you.

12 Q By the SAMS restrictions, right.

13 A Yeah, that you imposed, so it's you. It's not that the
14 BOP denied. The BOP says they're following your orders. The
15 BOP says, "Upon the U.S. Attorney's request we will impose,
16 but we can't rescind the SAMS." So it's you. It's not the
17 BOP.

18 It's nothing I did in the BOP for you to say that SAMS
19 imposes -- like you're accusing me of something I did.

20 Q All right. Well, regardless of who's responsible for the
21 restrictions, you're at least aware of them, are you not?

22 A Yes.

23 Q Okay. But despite that fact and despite the fact that
24 you're asking -- asking for these restrictions, at least in
25 some regards, to be -- to be lifted, the fact is that you've

1 attempted to circumvent these restrictions by having
2 conversations with other inmates, haven't you?

3 A How? When? Not in 10 South. You get wrote up for it.

4 Q All right. Isn't it --

5 A They take my commissary.

6 Q Isn't it true that on April 21, 2010, on or about that
7 date, you had written -- or leading up to that date, at least,
8 you had written on a mattress up at MCC in New York the
9 following"

10 "A rat is an animal, police's pet, that will chew off his
11 own mother-fucking tail to get out of a trap. I wish I had a
12 bullet for every rat's head."

13 Isn't it true that you wrote that on a mattress --

14 A Allow me to address this, Your Honor.

15 Q -- in MCC New York?

16 A This --

17 THE COURT: Just answer the question.

18 THE WITNESS: No, I didn't write --

19 THE COURT: Did you -- did you write it?

20 MR. TROYER: Okay.

21 THE WITNESS: And -- can I finish, Your Honor?

22 Please?

23 THE COURT: Did you write it?

24 THE WITNESS: No, no, I didn't write it.

25 THE COURT: All right.

1 THE WITNESS: But it wasn't -- the mattress wasn't
2 found in my cell.

3 THE COURT: All right.

4 THE WITNESS: The mattress found in six cell. I was
5 in two cell at the time. You never said it was in my cell.
6 Check the motion.

7 THE COURT: All right.

8 BY MR. TROYER:

9 Q Now, isn't it true that on April 21, 2010 you had been
10 brought down to FDC New York for your attorney contact visit,
11 right?

12 A Wrong. I was brought down on the 19th.

13 Q Okay. But you were here then on -- on April 21, 2010,
14 right?

15 A Depends -- I went back on the 21st. Depends what time
16 you're talking about. I went back 5:00 o'clock that morning,
17 6:00 o'clock that morning on the 21st, that Friday.

18 Q Okay. And when you're taking both to here and from here,
19 you go through these transit areas, as you refer to them,
20 right?

21 A Where at? Where you --

22 Q At FDC, at FDC Philadelphia.

23 A Yes, I come down from up there on the elevator and
24 straight down to R&D.

25 Q Okay. And isn't it true that on April 21, 2010, while in

1 one of these transit areas, you spoke to another inmate whom
2 you learned had had contact and was housed with Dawud Bey, and
3 that you told that inmate that, as to Dawud Bey, "He's
4 working," and then you told that same inmate, "You know what,
5 you can tell Dawud Bey? He can run, but he can't hide. A
6 smoky sad night will solve all of that."

7 Isn't it true that you said those words?

8 A Let me address this. I'm on a three-man hold. Anywhere
9 I go a lieutenant and two officers with me. When I go in a
10 cell, they cuff me up. I leave out, they shackle me.

11 None of them heard -- and I'm ready to call the
12 lieutenant and those two guards for witnesses, and they
13 would -- I never said that. I didn't see any other inmates.
14 Don't have time to say that much to anybody.

15 They restrict all movement where I move, wherever I go,
16 Oklahoma, Seattle, on the loudspeaker says, "Restrict all
17 movement." So who did I see? That's -- it takes a lot of
18 time to say it. I didn't just blurt that out. None of them
19 heard me, and I'm ready to call that lieutenant. I seen it.
20 She's willing to testify under oath that I didn't say a word
21 to anybody on that particular day.

22 Q Is your conversation that none of the prison people heard
23 it, or is your --

24 A They -- right there, none of them --

25 Q Or is your testimony that you didn't say it?

1 A Both. I didn't say it, nor did they hear it, and they
2 were right next to me. So -- and this particular place,
3 anywhere I go I have to holler through a cell. So they had to
4 hear me if I had to holler it.

5 I don't know -- ESP, we don't have telepathic abilities.
6 So that's a bold-faced lie.

7 MR. TROYER: Just a moment, Your Honor?

8 THE WITNESS: And you can go to the camera, Your
9 Honor. It's a camera, this particular cell.

10 THE COURT: I understand.

11 THE WITNESS: I -- I got to address these lies, Your
12 Honor. They got a history here --

13 THE COURT: Well, you -- you --

14 THE WITNESS: -- just saying anything.

15 THE COURT: You have addressed it.

16 THE WITNESS: Thank you.

17 MR. TROYER: Your Honor, I believe I don't have
18 anything else at this time.

19 THE COURT: All right.

20 THE WITNESS: I bet you don't.

21 THE COURT: Counsel, can I --

22 MR. HOEY: We have no redirect, sir.

23 THE COURT: Okay. You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Counsel, can I see you at sidebar.

1 (Sidebar discussion held, 11:50:06 a.m. to 11:50:45
2 a.m.)

3 THE COURT: Counsel, I don't know what -- where you
4 intend to go from here. I have a memorial service to go to,
5 and actually if I don't leave now, I'm not going to get there.

6 MR. TROYER: Okay.

7 THE COURT: What -- what do you intend to present in
8 addition to this, Mr. Hoey?

9 MR. HOEY: This would, I think, wrap up with brief
10 oral argument, Your Honor.

11 THE COURT: Okay. And how about you -- Mr.
12 Sullivan, you -- do you -- what do you intend to present?

13 MR. SULLIVAN: We were just going to briefly present
14 to rebut a few minor matters -- or not minor matters, but
15 Mister -- Special Agent Haas, and that was it.

16 THE COURT: Okay. Well, we're going to recess till
17 2:00 o'clock. We'll be back at 2:00. We'll hear the rest of
18 this, and then we'll go from there.

19 MR. SULLIVAN: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. HOEY: Thank you.

22 (Sidebar concluded at 11:50:45.

23 THE COURT: Recess.

24 (Luncheon recess, 11:51 a.m.)

25 AFTERNOON SESSION

1 (2:30 p.m.)

2 THE COURT: Mr. Hoey, any additional evidence or
3 testimony?

4 MR. HOEY: No, Your Honor. The defendant rests on
5 this particular issue.

6 THE COURT: All right. Mr. Troyer.

7 MR. TROYER: Thank you, Your Honor. The Government
8 would call Special Agent Kevin Lewis.

9 KEVIN LEWIS, GOVERNMENT'S WITNESS, SWORN

10 COURTROOM DEPUTY: State and spell your name for the
11 record, please.

12 THE WITNESS: Special Agent Kevin Lewis, L-E-W-I-S.

13 DIRECT EXAMINATION

14 BY MR. TROYER:

15 Q Okay. And, Special Agent Lewis, you're the case agent in
16 this matter?

17 A Yes.

18 Q And for how long have you bee a special agent with the
19 FBI?

20 A About 13 years.

21 Q Now, Special Agent Lewis, have you, or to your knowledge,
22 any other law enforcement officers or agents in this case,
23 ever listened to any conversations between the defendant and
24 his attorneys?

25 A No.

1 Q Since his arrest.

2 A No.

3 Q Okay. The -- and in this matter, also, have -- have you
4 ever read any of Kaboni Savage's legal mail?

5 A No.

6 Q Are you aware of anybody -- any other law enforcement
7 officers or -- or agents in this matter reading Mr. Savage's
8 legal mail?

9 A No. In fact, on one occasion Mr. Savage included letters
10 from his former attorney, Christopher Warren, in his personal
11 mail back to his -- to, I believe, it's to his mother and his
12 sister, and we actually -- I -- when I realized that was what
13 it was, I pulled it out and gave it to another agent who
14 wasn't involved in the investigation to make sure that there
15 were no threats or anything like that communicated in there,
16 and then that was sealed with -- with our CDC.

17 Q Okay. So -- so neither you nor anyone else on the -- on
18 the prosecution or investigative team has read any of Mr.
19 Savage's mail, is that right?

20 A That's correct.

21 Q All right. And has -- have the contents of any of Mr.
22 Savage's mail ever been conveyed to you by anyone?

23 A No.

24 Q All right. Now, with regard to visits, are you familiar
25 with the -- the general procedure at MCC New York for the

1 social visits that Mr. Savage has?

2 A Yes.

3 Q And could you just briefly summarize what those are?

4 A He has a two-hour visit scheduled from 1:00 p.m. to 3:00
5 p.m. every other Tuesday, and I want to -- I forget when the
6 next one is, but the -- the visit starts at one -- 1:00 p.m.,
7 but the -- the individuals showing up, they have to process
8 through the security of the -- the MCC to get brought up to
9 the -- the tenth floor for their visit.

10 Q Okay. So as a result if somebody is arriving for a one
11 to -- 1:00 p.m. to 3:00 p.m. visit, is it wise to arrive a
12 little early to account for that processing?

13 A Yes.

14 Q Okay. Now, is -- as part of the SAMS procedure in this
15 case that's been implemented is -- is it permitted and
16 expected that a member of the FBI or some other agent involved
17 in this case will be present for social visits?

18 A Yes.

19 Q And are those social visits, as part of the SAMS
20 procedure, monitored?

21 A Yes, they are.

22 Q Okay. Now, have -- have you or -- has the FBI or a
23 representative from the FBI attended each one of those visits
24 that is scheduled?

25 A Yes, we have.

1 Q Okay. Have you ever missed a visit?

2 A No.

3 Q Now, those visits in Mr. Savage's case are with whom?

4 A Normally, his -- normally his mother comes. Sometimes
5 his sister comes, sometimes his fiancé, Crystal Copeland,
6 comes, and his minor children have also come on occasion.

7 Q All right.

8 A Let me -- let me just clarify. When he was pre-
9 indictment, when he was at ADMAX in Florence, there was -- he
10 had a visit scheduled in which I was struck -- stuck on the
11 tarmac in Philadelphia and was -- arrived -- actually, I
12 missed my connecting flight to Colorado in Chicago.

13 So he missed the first day of a three-day visit out
14 there, pre-indictment because I was not -- I could not make it
15 out there 'cause I was stranded in Chicago overnight.

16 Q Okay. But since Mr. Savage has been in MCC New York,
17 has -- have there any -- been any such incidents?

18 A We have not -- we have not been the result of that, no.

19 Q Okay. Have there been times when -- when those people
20 who are scheduled to visit Mr. Savage have missed those
21 visits, in other words, have not -- have not shown up?

22 A They -- he normally -- works out to be about an average
23 of one -- every three visits that he has, somebody shows up on
24 one out of every three -- every three visits. So there are
25 usually two visits, you know, in any three-week period that

1 he's missing.

2 Now, sometimes he has two or three in a row where
3 they'll make it, but then they'll go two or three where they
4 miss it, also. So it's not in every -- there's nobody
5 available there. We -- we're up there in New York waiting for
6 somebody to show up, and on five or six occasions nobody has
7 shown up.

8 Q Okay. And the -- has there been -- what has the practice
9 been in terms of those people who are supposed -- the visitors
10 showing up, whether they call ahead of time to -- to announce
11 that they're not coming or will be late?

12 A For -- for the first nine months or so they would call
13 and advise Mr. Haas at MCC New York that they were going to be
14 at the visit or they were not going to be at the visit, and if
15 they were not going to be there, we didn't travel to New York.

16 For the last nine months or so they no longer call, so we
17 go up there. We wait there. They don't show up, and we end
18 up driving back later on that night.

19 Q Okay. So to summarize, approximately how many times have
20 either you or your partner gone from Philadelphia up to New
21 Your and only -- only to have nobody show up?

22 A About four or five, four or five occasions.

23 Q All right. Have there been occasions when the family
24 members have arrived -- have arrived late?

25 A It actually happened frequently, yes.

1 Q Okay. And on those occasions what -- what has been the
2 result in terms of the length of the visit?

3 A The -- the visit -- the MCC New York extended the visits
4 on several of the occasions where it was supposed to end at
5 3:00, they extended it to -- towards 4:00 o'clock.

6 There was a count, I think it's at 4:00 o'clock, so they
7 have to be out of the institution. Might even be 4:30. They
8 have to be out of the institution.

9 So they've extended a couple times beyond the 3:00
10 o'clock if it was the MCC's fault because in processing, and
11 sometimes getting people upstairs they have to have manpower
12 to get the visitors upstairs. They have extended visits.

13 There have also been visits where the people visiting
14 showed up late, and the visit was cut off at 3:00 o'clock, as
15 it was prescribed by the -- by the -- the MCC New York.

16 Q Okay. And is there any requirement under either the SAMS
17 or MCC New York procedures to -- to extend those visits, or is
18 that simply a courtesy that they extend?

19 A It's just MCC New York's courtesy.

20 Q All right. Now, let me ask about telephone calls.

21 Are you familiar with the telephone calls that he -- he
22 can have with, again, social calls to the family members?

23 A Yes.

24 Q And those are also monitored?

25 A Yes, they are.

1 Q Okay. And they're monitored real time, as opposed to
2 simply recorded, as are most prison calls with most prisoners.

3 A Yes, they're monitored real time.

4 Q Okay. And since -- since Mr. Savage has been at MCC New
5 York, approximately how many times has -- has the Bureau of
6 Prisons missed a call, or rather, failed to do a scheduled
7 call?

8 A I believe there was one time where we -- we were
9 unavailable for the call, and I think that call was later made
10 up, and there was another time where the prison was
11 unavailable to do a call in a given month, and they made that
12 call up in a following month. So he had two calls in a -- in
13 a subsequent month.

14 Q Okay. All right. Now, earlier today you may have heard
15 some testimony about -- about books.

16 Have -- have you had any input or attempted to have any
17 input into the books that Mr. Savage can receive or not
18 receive?

19 A The MCC New York sends us the books that he does receive
20 at the institution for us to review, but we haven't rejected
21 any books.

22 MCC -- I am aware that MCC New York did -- did reject, I
23 think it was two books, for whatever purposes -- for their own
24 purposes, not for any at our direction.

25 Q Okay.

1 MR. TROYER: Your Honor, I have no further questions
2 at this time.

3 THE COURT: All right. Mr. Hoey.

4 MR. HOEY: One moment, please, sir.

5 (Pause in proceedings.)

6 MR. HOEY: Your Honor, we have no questions of the
7 agent.

8 THE COURT: All right. You may step down.

9 Mr. Troyer, anything further?

10 MR. TROYER: No. Thank you, Your Honor. We -- we
11 do not. Thank you.

12 THE COURT: All right. Mr. Hoey, I'll hear whatever
13 you have to say.

14 MR. HOEY: Thank you, Your Honor.

15 Your Honor, first order of business is to thank the
16 Court for taking on the issues that we've raised today. They
17 are clearly serious, as they pertain to our ability to
18 represent Mr. Savage.

19 Mr. Sullivan and I certainly wish to thank the Court
20 for listening to these concerns.

21 I think the first order of business is to discuss
22 those areas which the Court has outlined in its recent
23 memorandum as being ripe for today's consideration that
24 consider the legal mail issues, the inability to effectively
25 communicate with counsel, as well as the inability to access a

1 computer and a law library.

2 Collectively, I would think and conclude all pertain
3 to Mr. Sullivan, Mr. Cooke and I's ability to represent Mr.
4 Savage effectively.

5 As the Court is aware and as the Court has cited
6 within its memorandum, a defendant in Mr. Savage's capacity,
7 one being certified perhaps for the death penalty, enjoys a
8 broader range of constitutional privileges, if you will.

9 That concept that a capital defendant detainee enjoys
10 greater protections is well-founded, not only within the
11 statute, but within the case law that we've cited within our
12 own brief.

13 The simple reason and the common sense reason for
14 that is that because the stakes are so high in such a case and
15 because the requirements placed upon counsel in such a case
16 are significant.

17 Mr. Sullivan, as the Court is well aware, is a
18 second attorney appointed to the case. Under statute it's
19 required that Mr. Sullivan have unfettered access to his
20 client in the capital case.

21 It's clearly required under the law that Mr. Sullivan be
22 permitted unfettered access to his client and really
23 unfettered ability to prepare a mitigation defense. Clearly,
24 with the penalty phase attorney that's -- that's fairly clear.

25 As it pertains to my representation, Your Honor, in

1 the guilt phase I think the same standard would apply. This
2 is a very serious matter involving very serious consequences,
3 and when we analyze the restrictions that have been placed on
4 Mr. Savage and his constitutional protections, the case law
5 also is very clear.

6 The case law requires the Government to demonstrate
7 that there's a rational means or a rationale between the
8 restrictions and the penalogical interests at heart, and when
9 we analyze the restrictions under *Turner v. Saffley* and the
10 test set forth in that matter which we've cited, it, again,
11 requires that the -- the burdens that a constitutional right
12 might have must be reasonably related to legitimate objectives
13 of the prison.

14 And in this particular case I would argue
15 strenuously, Your Honor, that the SAMS restrictions, most
16 specifically, those three that you've identified, are clearly
17 impairing our ability to fairly and effectively represent our
18 client.

19 I would ask the Court from the evidence that was
20 taken today to determine whether or not leaving somebody's
21 light on in a jail cell 24 hours a day is reasonably related
22 to anything that the -- the prison or the Bureau may seek to
23 impede. Why is keeping somebody awake with a light on 24
24 hours a day -- we're not talking about a month now, talking
25 about over 18 months at the MCC -- while it was not the

1 condition at ADX, it certainly has been the condition for 18
2 months, and I think the response or the questioning of Mr.
3 Savage today with respect to his ability to somehow remediate
4 that condition by pulling a blanket over his head is absurd.

5 I think what -- what happens when someone's
6 subjected to that particular condition for that period of time
7 goes without saying.

8 To bring him down here for 48 hours to the FDC and put
9 him in a dry cell with no toilet, no sink, no ability to -- to
10 void, to leave the light on in his cell for 24 hours a day and
11 then to say, "You know what, I can't believe he's not ready to
12 meet his lawyers, I can't believe he's -- he's not -- not --
13 not prepared to have a very cogent discussion with his
14 attorneys about his defense" -- the guy's been up all night.

15 He can't go to the bathroom without knocking on the
16 door and asking the guard to open the door up and let him out
17 in the middle of the night to go to the bathroom 'cause he has
18 no toilet in his cell. He's got no sink. He has no
19 facilities or use of any facility that would be reasonable
20 under the circumstances.

21 And then he's asked, "Well, why -- why wouldn't you
22 want to come back to Philadelphia?" Why would he? How are
23 those conditions reasonably related to any penalogical
24 interest in the case? What can the Bureau of Prisons or the
25 Government say in this case is why they're doing that. Why

1 are they doing that? How does that effectively impede Mr.
2 Savage from doing anything untoward?

3 Quite frankly, it sounds like it's punitive in
4 nature and certainly goes beyond any reasonable bounds of
5 managing an inmate.

6 The next issue concerns the access to a legal
7 library. This is a capital defendant. In the Metropolitan
8 Correctional Center, which is a facility that houses America's
9 worst criminals in 10 South the -- Mr. Ghailani on trial in
10 New York now is accused of blowing up a -- an embassy in
11 Africa, which, of course, preceded the 9/11 attacks. He's one
12 of the most serious offenders in the United States.

13 In that institution on his block that gentleman, as
14 well as Mr. Savage, have no law library. He's been afforded
15 two separate one-hour occasions to be behind a computer on the
16 block that allows him access to a -- a computerized legal
17 database, Lexus, from which he can't print off a case, from
18 which he can only look at case law and write down on his
19 notepad what the case may say. He has no ability to prepare
20 his own defense.

21 The discovery that we carefully copied at great
22 expense to the Government was provided to him in paper form
23 because he didn't have access to a computer, and we weren't
24 going to mail him disks that would sit in his jail cell unused
25 'cause he can't get to his computer.

1 We mailed him the boxes of discovery. They're
2 sitting in the warden's office, or the assistant warden's
3 office. Nevertheless, he gets one box at a time that may be
4 one box completely out of order chronologically from all the
5 other discovery he may have looked at.

6 I can only imagine how difficult it is to request
7 another box and get one that is somewhat chronologically
8 consistent.

9 THE COURT: Mr. Hoey, the things that are in the
10 boxes, are they on disk?

11 MR. HOEY: They are.

12 THE COURT: Everything?

13 MR. HOEY: They are.

14 THE COURT: All right.

15 MR. HOEY: And we'd be happy to provide him those
16 disks, but when we asked our client what is the best way to
17 look at it, he said he has no access to the computer, and
18 there's no way for him to look at it in that manner.

19 THE COURT: If he had access to a computer and he
20 had the disks, there would be no problem.

21 MR. HOEY: Correct.

22 THE COURT: All right.

23 MR. HOEY: So the -- the other argument with respect
24 to the -- the legal library access, Your Honor, is very
25 simple. What rational basis exists to subject him to -- to no

1 right to the library? What penalogical interest is advanced
2 by doing that? He can't communicate over that internet. He
3 can't copy any cases. He can only look at the cases? There's
4 no rational basis between restricting his access to the law
5 library and any penalogical interest that may exist.

6 THE COURT: All right.

7 MR. HOEY: The other issue concerns the legal mail,
8 Your Honor. Mr. Savage testified clearly on direct and was
9 challenged heavily on cross about, you know, his confidence in
10 communicating with his attorneys.

11 Well, who could blame a guy who's been kept in ADMAX
12 in Colorado, 24 hours a day in his cell at the MCC and having
13 very remote supervised human contact once a month, who could
14 blame him for being concerned about his ability to effectively
15 communicate privately with his lawyers, both in person and
16 through the mail when there have been at least two orders from
17 this Court directing the Bureau not to open his mail, and it
18 continues unmitigated, and then he's cross examined today,
19 "Well, you know, you can talk to your lawyers through the
20 mesh. You can talk to them, right?"

21 Well, yeah, he can, but what kind of confidence do
22 you think he has when every piece of mail that he's getting
23 from his lawyers is opened? There's two ways for a -- the
24 lawyer to communicate with his client. Clearly, one is in
25 person, and the other is through the mail. We know how

1 expensive it is to send a lawyer up on the train to see his
2 client in Manhattan. It's expensive.

3 One equally effective way to communicate way to
4 communicate with Mr. Savage is for me to mail letters
5 outlining strategy, suggesting ways we can cross examine
6 witnesses, go through all sorts of defense tactics through the
7 mail and discuss these things, when we now know it's being
8 opened and, presumably, read.

9 And to suggest that he should somehow be emboldened
10 to have some kind of confidence in the system, quite frankly,
11 I think is outrageous.

12 Now, the attorney meetings occur in a metal cell
13 with a mesh wall between my client and myself with the
14 administrator sitting right outside the jail cell at the desk.

15 THE COURT: Mr. Hoey, we made arrangements for you
16 to meet with your client, have contact visits, you and Mr.
17 Sullivan --

18 MR. HOEY: Certainly, Your Honor.

19 THE COURT: -- here at the FDC. Why is that not
20 adequate?

21 MR. HOEY: I think it's inadequate constructively
22 and actually, Your Honor, for -- for several reasons.
23 Constructively -- well, actually, what's occurring is when
24 he's brought down here, he's subjected to conditions that are
25 pretty -- downright deplorable. He's discussed his inability

1 to have shackles removed when he has a bowel movement in the
2 prison, which is not only unsanitary, but completely
3 impossible to believe.

4 He sits in a cell that's a dry cell, a suicide watch
5 cell with a light on 24 hours a day. This is very technical
6 stuff that we're reviewing in terms of discovery. He's only
7 allowed to bring one box of that down at a time. When he
8 meets with us -- when he met with us at the prison, he's
9 effectively awake for 48 hours. It's a completely disruptive
10 process.

11 Clearly, Your Honor, I think the easy resolution is
12 to -- to have him housed at the FDC in Philadelphia. This is
13 a trial that's beginning in September 2011, less than a year
14 away. We're going to need him here, anyway, eventually, and
15 he's going to be a permanent resident at that facility from
16 jury selection, pretrial motion arguments, which are going to
17 go on for days, the substance of the trial, the penalty phase.
18 He's going to live there, and the question is, is he going to
19 live in that dry cell with a light on and be asked to come to
20 Court the next day fresh and ready to participate in his
21 defense.

22 I think it's a tortuous element of his confinement
23 to have a light on 24 hours a day. There's been no evidence
24 from the Government today to suggest why that's necessary.

25 But to answer the question about why he's not coming

1 to Philadelphia, I think actually those things are
2 impediments, and I think constructively, even if he were to be
3 able to withstand that and come into a room and meet with us,
4 he's not of the mindset to deal with preparing for a capital
5 offense. I think the easy resolution is to move him -- move
6 him down here permanently.

7 And I don't know that there's been -- there's been
8 no evidence put on the record today as to why that can't
9 happen. There's no -- there's no record to suggest that that
10 less invasive measure is inappropriate, and isn't that the
11 Government's burden to demonstrate under *Wolfish* and the other
12 cases that we've cited.

13 Finally, Your Honor, getting back to the legal mail,
14 I think Mr. Savage aside, I think the attorneys in the case
15 have concluded that there is a lack of confidence in the
16 ability to communicate through the mail, and I think that
17 that's a serious problem, and -- and I understand Mr. Troyer's
18 taken steps, and we're very grateful for that, and I know Ms.
19 Sykes has been part of it, and we're grateful for it, but --
20 but on the 21st of September those steps were recited to the
21 Court, and when Mr. Savage goes back to his cell, the mail's
22 re-opened and stamped as having been re-opened.

23 So I mean this is really, you know, a pretty bad
24 history on the legal mail, and I think it's undermined his
25 confidence and undermined our confidence that the mail is an

1 appropriate manner of communicating with our client. I think
2 the sum total of all of this restriction is that it is
3 practically, actually and constructively interfering with our
4 right to effectively represent Mr. Savage.

5 Your Honor, I see no other way around it, and I
6 think the practical resolution, which has not yet been
7 rebutted with any credible evidence, is housing him at the
8 FDC, subject to restrictions that may prevent what -- what
9 they think needs to be prevented can be imposed.

10 THE COURT: All right.

11 MR. HOEY: Thank you, Your Honor.

12 THE COURT: Thank you.

13 Mr. Troyer.

14 MR. TROYER: Thank you, Your Honor.

15 Your Honor, we do -- we do begin with the Supreme
16 Court's determination that a prison regulation that burdens a
17 constitutional right is constitutional, provided that it's
18 reasonably related to legitimate penalogical objectives,
19 and -- and we do go then to the *Turner* factors.

20 And in this case I mean what we're really getting
21 down to, it's somewhat unbelievable that we're spending time
22 talking about, you know, the -- the type of cell and whether
23 there's a light on and how often he can get to his -- his
24 toilet facilities. Those are really not the kind of things
25 that the Courts should or should have to -- to get involved

1 with.

2 These are -- these are situations in this case, and
3 we look at the factors, and, you know, the factors, of course,
4 are, one, whether there's a valid rational connection between
5 the prison regulation and the legitimate Government interest
6 put forward to justify it.

7 You know, in a situation where Mr. Savage is brought
8 to Philadelphia, yes, he's put in a -- in a cell that -- that
9 doesn't have flushing toilet facilities, and the reason for
10 that, of course, as was clearly described to him, and they're
11 in the papers that are part of the addendum to the motion
12 itself, is the reason for that, as was described by the warden
13 of FDC, is that Mr. Savage had previously been in FDC and he
14 had been in the SHU, which is about, other than where he is
15 right now, is at the highest security one can have in the
16 special housing unit, and even while in the SHU he was not
17 only communicating threats and conspiring with witnesses who
18 were on the other side of -- in the next cell, but he was --
19 he and the other person were using the toilet facilities to --
20 to also communicate threats and conspire to hurt witnesses and
21 their families.

22 And so, obviously, this is a valid rational
23 connection. Normally, it's true. The prison system wouldn't
24 put that kind of a restriction on somebody, but in this case,
25 unfortunately, it -- it's quite necessary.

1 And, again, when we get down to the nitty-gritty of
2 the testimony, you know, there's never been any occasion where
3 Mr. Savage hasn't been able to -- to use toilet facilities
4 when he's needed, and I know there's some testimony about how
5 he was handcuffed or shackled. I don't know that that's the
6 case or not, but it's -- in any event, it certainly hasn't
7 hindered -- it doesn't rise to a constitutional level in this
8 case.

9 Are there alternative means of exercising your
10 right? Mr. Hoey can come up here and say, well, you know, he
11 should be sent to FDC Philadelphia, and, gee, that would make
12 everything easier, but easier for whom? It's -- you know, the
13 Bureau of Prisons has to -- has to house Mr. Savage, and they
14 have to make sure that Mr. Savage is safe and that others are
15 safe.

16 The reason that we have these restrictions, and,
17 yes, it's a capital case, but the reason we're here and the
18 reason it is a capital case and the reason there are SAMS
19 restrictions is because Mr. Savage, you know, has committed
20 some very serious crimes, and, unfortunately, many of the
21 crimes that he's committed, that he's been indicted by a grand
22 jury for having committed, are crimes he's committed while
23 he's been in correctional facilities.

24 In fact, six of the 11 murders that he's charged
25 with were committed when he was at the FDC Philadelphia right

1 across the street in -- in a rather secure setting.

2 It's -- so it's not an easy situation, and, of
3 course, the other murder was when he was at one of the local
4 facilities, CFCF. So it's not as if there are easy
5 alternative means of exercising the right.

6 The impact accommodation of the asserted
7 constitutional right, you know, when we look at those factors
8 and the absence of ready alternatives -- but the fact is Mr.
9 Savage is a pretrial detainee, but he's also a sentenced
10 prisoner. He's designated to ADMAX. He was in ADMAX before
11 he was indicted and before he was brought closer to the
12 Eastern District of Pennsylvania for -- for trial.

13 It was -- he could have easily -- the Bureau of
14 Prisons and the marshals could have said, "You know what, send
15 him back to ADMAX. Counsel can go out, and they can -- they
16 can visit him out there," but we -- we knew that that would --
17 that could create some difficulties.

18 We knew that because of the nature of the case and
19 because it is a big case, that we would have to take some
20 extra steps.

21 The Bureau of Prisons, to their -- to their great
22 credit, I think, took those steps and with the consent and
23 agreement of defense counsel at that time he was sent to MCC
24 New York, a place that is much more convenient for an attorney
25 in the Philadelphia area and for an attorney from Maryland, as

1 is Mr. Sullivan, and it's not that far. It's not that hard to
2 get to, and -- and then, of course, the next thing we heard
3 is, "Well, we need contact visits, and MCC New York won't give
4 them."

5 Again, the Bureau of Prisons and the Government has
6 bent over backwards to -- to accommodate Mr. Savage, and
7 despite the fact that the case law is fairly clear that
8 there's not a constitutional requirement of having contact
9 visits, we all recognize, I know the Court recognizes, and the
10 Government as well recognizes that there -- there -- that
11 contact visits are -- are something that are valued and -- and
12 valuable to defense counsel and -- and their clients

13 And so, again, we made these accommodations. We
14 made these accommodations to bring him down here to
15 Philadelphia, and he was going to be brought down here once a
16 month and then later on, twice a month as we got closer to
17 trial, and what happens, Mr. Savage, you know, as if he's
18 staying at the Holiday Inn and he's -- and he doesn't like his
19 room, he says, "Well, you know, I don't like the room I'm
20 staying in. It's -- it's dirty, and I don't like the
21 facilities."

22 Well, that -- you know, that's just simply not an
23 answer. I mean, you know, the Bureau of Prisons is not a
24 travel agency. You know, he's brought down here. He's in --
25 in this type of room for a reason, and there's nothing about

1 being in a room like that that would stop him from having a
2 contact visit and a valuable legal visit with his legal team.
3 It's just not --

4 THE COURT: Mr. Troyer, let's back up a minute.

5 MR. TROYER: Yes, sir.

6 THE COURT: Tell me what -- what the penalogical
7 interest is in having a light on in your cell for 24 hours a
8 day.

9 MR. TROYER: Well, the one that occurs to me
10 immediately is, although I don't -- I know that wasn't exactly
11 the focus of their motion, at least until today, but is a
12 security issue. Now, I --

13 THE COURT: They do that to everybody in the SHU
14 over in the FDC?

15 MR. TROYER: They -- they -- to my knowledge, they
16 do not. I'm not 100 percent sure, but I don't believe that --

17 THE COURT: Well, if they don't do it for everybody
18 that's in the SHU, why are they doing it for Mr. Savage?

19 MR. TROYER: From my understanding, from having
20 talked -- talked to other -- a couple of the people from FDC
21 today, my understanding is that the particular cell that he's
22 in, because it is a strip cell or suicide cell, that -- that
23 they do not have the ability -- what I heard earlier this
24 morning was they do not have the ability to turn that light on
25 and off. It's a light that stays on all the time. It's --

1 it's -- I think it would be an easy fix if -- if there were
2 simply a light switch and they could do that, but that's --
3 that's what I heard earlier today, so --

4 THE COURT: With regard to the mail, Mr. Troyer --

5 MR. TROYER: Yes, Your Honor.

6 THE COURT: -- is there any -- what is the solution
7 to that problem?

8 MR. TROYER: The solution to that problem was --
9 was -- I believe was articulated was -- was found last month
10 and was articulated to this Court last month and was -- and
11 was documented by the email that I gave.

12 And -- and that -- we addressed that rather
13 completely. We recognized that there had been some errors
14 made, and -- and I'll repeat that some of those errors were
15 made by counsel, and they weren't made on purpose, but there
16 were a couple of -- of the envelopes that were sent, I know
17 from Mr. Hoey's office, was probably just done by a clerical
18 staff person without Mr. Hoey looking at it, simply had, you
19 know, 50 Darby Road, Paoli, PA. There were others, though,
20 where there were mistakes, and it clearly appeared to be legal
21 mail.

22 THE COURT: Well, the indication is from the
23 defendant that even after the hearing that we had to address
24 that problem it happened again.

25 MR. TROYER: I submit that that's false, and I -- I

1 submit that Mr. Savage is not -- that is a claim that was not
2 made. It was not brought to the Government's attention until
3 this morning. It was -- Mr. Savage has filed -- has filed
4 nothing with the Bureau of Prisons making that allegation. He
5 basically came into Court today and said, "Look, here's an
6 envelope. It's been opened."

7 Well, of course, it's been opened. That could have
8 been opened by him. It could have been opened in his
9 presence. It was not -- there's nothing but Mr. Savage's own
10 word as to these two envelopes.

11 One thing I will do, Your Honor, and I would -- I
12 would encourage -- not having seen these two envelopes until
13 today, I noticed one thing very, very important about them.

14 Do we have them?

15 (Pause in proceedings.)

16 MR. TROYER: You know, the previous envelopes have
17 been attached as exhibits that had been -- that had been
18 opened. The ones -- and the ones that MCC New York
19 acknowledged had been opened, and the one thing that was
20 interesting about those was that MCC New York, when -- when it
21 came in, they stamped it, erroneously and mistakenly. They
22 stamped that as general correspondence to be opened, and there
23 was a stamp put on it. So there was -- it was clear that it
24 had been opened.

25 By contrast, none of these, given the fact that that

1 is the practice up there, none of these bear that stamp.
2 There's nothing on these envelopes to show that that was --
3 that that was the case here. There's nothing on these
4 envelopes to show that they were opened either on purpose or
5 by mistake. Again, all we have is Mr. Savage's word that,
6 "Oh, yeah, I got these, and they were already open."

7 Nothing -- there's nothing on here at all to show
8 that, not on the front of the envelope, not on the back of the
9 envelope, nowhere, and -- and we know from the other
10 envelopes, again, just to be perfectly clear, it says,
11 "Notice, opened as general correspondence. For special mail
12 requirements, see 28 CFR 540.19."

13 And so -- so it's Mr. Savage and Mr. Savage alone
14 who's making this claim that, "Oh, I got these, and they were
15 opened. They shouldn't have been opened."

16 Now, again, is it possible that a mistake could have
17 been made? I suppose it's possible, but I -- I submit that
18 the evidence is really to the contrary on this.

19 THE COURT: Mr. Troyer, couldn't the problem be
20 solved by a -- the -- the security cameras not -- giving him
21 the mail right in front of the security cameras and showing
22 him the mail, the legal mail we're talking about now, so that
23 there's a record, essentially of the fact that it has not been
24 opened before it's been given to him?

25 MR. TROYER: Candidly, I -- I can't answer that

1 question because I don't know how the cameras -- specifically
2 how the cameras are positioned and whether that would show it
3 or not.

4 THE COURT: I don't know either, but I think it
5 needs to be looked into.

6 MR. TROYER: Well, one thing I will say is that,
7 despite what Mr. Hoey said about the Government's burden, this
8 is the defendant's motion and this is the defendant's
9 burden --

10 THE COURT: I understand.

11 MR. TROYER: -- and the defense could certainly
12 have -- they could certainly have subpoenaed those -- those
13 tapes, if there are tapes from it, and I don't know if there
14 are. They certainly could have made efforts to do that and
15 present that evidence, if there was such evidence, and they've
16 made no such attempt to do so.

17 THE COURT: Well, I would suggest that perhaps you
18 ought to communicate with the -- the New York people and find
19 out just exactly how that could be resolved.

20 MR. TROYER: Yes, and I -- and I have, of course, in
21 the past, and -- and, again, I know that, at least until this
22 morning, there was no further controversy about that matter,
23 and I know that -- again, from the email that I had submitted
24 as an exhibit for Mr. Haas, that all of matters were to go
25 through, you know, one central authority so that there would

1 be no mistakes and no problems with that -- with that mail.

2 But, of course, you know, more importantly, and I
3 recognize that, you know, what Mr. Savage is saying, although,
4 again, I mean I think it's certainly somewhat biased, but I
5 don't think -- I don't think there's any rational reason to
6 believe that anyone is reading Mr. Savage's mail.

7 We know that there -- you know, when mail comes in
8 and when any parcel or item comes in, certainly things have to
9 be opened to make sure that there's not some sort of
10 contraband, and we're not suggesting, of course, that
11 contraband in the form of drugs are going to be sent in mail
12 or some weapon, but -- but there are, however, certain things
13 that come in that are not -- sometimes unwittingly are sent,
14 sometimes there are staples, there are paperclips or other
15 things that could be fashioned into weapons, and I know
16 that -- that obviously federal correctional institutions are
17 very concerned and careful about that. But nobody's
18 reading -- nobody is reading Mr. Savage's mail.

19 And if I just can -- can sum up this whole thing, I
20 think there's one person, there's one person and one person
21 only, who's restricting this defendant's constitutional
22 rights, and that's Mr. Savage himself. He's -- he's the one
23 who is -- despite his attorneys' best efforts, despite the
24 Government's best efforts and even this Court's best efforts,
25 that he's the one who's impeding his ability to talk to his

1 lawyers and is impeding his lawyers' ability to talk to him.
2 He's the one who's saying -- who's making up this -- this
3 crazy stuff about, "Oh, well, you have lip readers so I can't
4 talk to -- can't talk to my attorneys in MCC." It just is not
5 credible information.

6 Mr. Savage has the ability, he has the opportunity
7 to have full and fair preparation of his defense and full and
8 fair access to his attorneys, and he is declining those
9 opportunities, just as he's declining his opportunities to use
10 the electronic law library, just as he's declining his
11 opportunities to -- well, or family's declining opportunities
12 to have visits. That's not on Mr. Savage, but he's -- he's
13 the one who's turning down these opportunities.

14 And he's the one who's causing his own problems, as
15 well, because he's had -- you know, with all the restrictions
16 he's had, he's had further discipline problems in here, as we
17 put -- set forth in our -- in our response.

18 You know, Mr. Savage, unfortunately, you know,
19 hasn't -- certainly hasn't seen the error of his ways, and
20 he's certainly continued. Even with the -- the few and
21 fleeting opportunities that he's had, he's continued to try to
22 take advantage of those opportunities to -- to either convey
23 threats or otherwise cause problems.

24 So, again, the only person who's standing in the way
25 of Mr. Savage -- Mr. Savage preparing his defense is Mr.

1 Savage, and he shouldn't be rewarded for that. Mr. Savage
2 does he some strict restrictions on him, but those
3 restrictions are there for a reason.

4 He's been indicted for 11 murders. He's been
5 indicted for murdering, you know, family members of a witness.
6 He's been indicted for murdering a witness in yet another
7 murder case. Mr. Savage is the veritable poster child for the
8 SAMS restrictions.

9 He can complain about being put in there with
10 terrorists. If I were one of the terrorists, I'd be worried
11 about being in there with Mr. Savage. That's how dangerous he
12 is.

13 So I think that's -- I think under the -- under the
14 circumstances, these restrictions are rational, and they're
15 certainly related to -- to the BOP's functions, and I think
16 they should be left intact.

17 Mr. Savage practically invited the Court or the
18 Government to send him back to ADMAX, and that is certainly
19 a -- a possibility if Mr. Savage just doesn't want to comply
20 and doesn't want to cooperate with all the opportunities that
21 have been given him, but I submit that the best thing would be
22 for Mr. Savage to take advantage of those opportunities that
23 the Court and the Government and his own lawyers have
24 attempted to fashion for him here.

25 THE COURT: All right.

1 MR. TROYER: Thank you.

2 THE COURT: All right, counsel. We'll take a look
3 at the situation, and we'll make a determination as to what
4 needs to be done, if anything, to resolve the problem. All
5 right.

6 MR. HOEY: Thank you, Your Honor.

7 THE COURT: Okay. Before we leave, Counsel, can I
8 see you at sidebar.

9 (Sidebar discussion, 3:09 p.m. to 3:15 p.m.)

10 THE COURT: Okay. Mr. Troyer, let me break this
11 down. I'm going to request that you communicate with the
12 people at New York with regard to my inquiry about giving him
13 the mail under conditions where it will be absolutely clear
14 that it hasn't been tampered with.

15 I'm going to also -- I want you to talk to them
16 about this computer situation and the fact that the disks are
17 available for his use. Seems to me --

18 MR. HOEY: They are --

19 THE COURT: -- that that would resolve a huge
20 problem, and I want to know whether -- where is the computer
21 that he's supposed to use, are there problems --

22 MR. TROYER: The computer could actually be brought
23 to his cell, and he can actually -- right there he can -- he
24 can use it. He can access it. He can put the disk in.
25 That's been offered to him. He's -- he's the one who's chosen

1 to -- to get things in paper.

2 THE COURT: I want to -- that has -- Mr. Hoey, is
3 that consistent with your understanding?

4 MR. HOEY: When I go up there, Judge, there's a, you
5 know, the resident cells and then there's visiting cells, a
6 very small block.

7 From what I recall, there was a -- just a keyboard,
8 if you will, kind of like a phone keyboard in that room where
9 I met with him. I don't think I saw a computer.

10 THE COURT: Well, let's -- let's find out, and let's
11 get to the bottom of it and find out exactly how the situation
12 can be resolved.

13 With regard to the situation over at the FDC, I want
14 you to communicate with the FDC and report back why it's
15 necessary to keep him in -- in a situation here he can't sleep
16 at night. All right.

17 MR. TROYER: All right.

18 THE COURT: And, finally, with regard to the -- the
19 contact visits, it seems -- when he's down here, you have the
20 ability to communicate with him --

21 MR. HOEY: Uh-huh.

22 THE COURT: -- and you have contact visits.

23 MR. HOEY: Yes.

24 THE COURT: Do you need more of them?

25 MR. HOEY: Well, you know, it's been kind of

1 suspended during the course of this proceeding simply because
2 he's, I think, refused to come back down and sit in that dry
3 cell.

4 THE COURT: If he -- if he continues to refuse,
5 that's his problem, but if you need additional visits as this
6 thing goes forward, I want you to --

7 MR. HOEY: Certainly, Your Honor.

8 THE COURT: -- communicate that, and we will make
9 arrangements for it. Okay.

10 MR. HOEY: Yes.

11 THE COURT: All right.

12 MR. TROYER: Sorry to ruin your schedule today, and,
13 you know, I didn't expect this would take as much time as it
14 did.

15 THE COURT: Sure enough.

16 MR. SULLIVAN: We're under a year until trial, so
17 inevitably we're going to be having this discussion about
18 housing -- where we're going to house Mr. Savage during the
19 trial in this case, and it just seems prudent to me to kind of
20 be in front of the problem as --

21 THE COURT: I intend to talk to the Bureau of
22 Prisons about that situation, because, certainly, if there
23 were some way that he could be down here, it would be -- it
24 would solve the problems.

25 I understand that they're not anxious to accommodate

1 that, but we'll check and find out.

2 MR. HOEY: It sounds like the toilet is the only
3 issue.

4 THE COURT: Well --

5 MR. HOEY: Other than the --

6 THE COURT: There is -- there is --

7 MR. HOEY: For many reasons.

8 THE COURT: There is a valid reason why he doesn't
9 have a toilet in his cell, and he confirmed it today with his
10 testimony. They do communicate. So --.

11 Finally, we're going to run into a problem with
12 mitigation experts wanting to -- mitigation exerts, a
13 psychologist wanting to communicate with him --

14 MR. TROYER: Well, that won't be a problem. We will
15 certainly have -- they'll all be -- they'll all be admitted
16 through the SAMS process. We've had -- we've had other co-
17 defendants in this case who have had the same kind of request
18 with --

19 THE COURT: Will they have the ability to have
20 contact visits as -- if counsel --

21 MR. TROYER: If they need them, we could -- we can
22 provide them, certainly.

23 MR. SULLIVAN: Are the co-defendants under SAMS?

24 MR. TROYER: No.

25 THE COURT: Hmm?

1 MR. SULLIVAN: The co-defendants aren't under SAMS,
2 though.

3 MR. TROYER: No, but --

4 MR. SULLIVAN: So it's a -- it's a totally different
5 analysis, and I can tell you now, Savage is not going to be
6 evaluated by any mental health people up at MCC New York.
7 It's going to have to happen down here.

8 THE COURT: Okay.

9 MR. TROYER: Well, then we can bring him --

10 MR. SULLIVAN: And that's more than --

11 MR. TROYER: -- down here and have him evaluated by
12 somebody.

13 MR. HOEY: Is there no other cell in that prison
14 that he can be in with the -- you can turn a light of and -- I
15 mean to be, just to be practical. I mean this guy comes down
16 here. They bring him at 4:00 o'clock in the morning. He gets
17 down in the cell. The light's on all day. I mean its -- it's
18 not conducive to --

19 THE COURT: Mr. Hoey, I will communicate with the
20 people at the FDC and find out what can and cannot be done in
21 that regard. Okay.

22 MR. HOEY: Okay.

23 MR. TROYER: Thank you.

24 THE COURT: All right.

25 MS. SYKES: Thank you.

1 (Sidebar ends, 3:15 p.m.)

2 (Proceedings concluded, 3:15 p.m.)

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6 C E R T I F I C A T I O N

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8 I, Tara Martin, court-approved transcriber, certify
9 that the foregoing is a correct transcript from the official
10 electronic sound recording of the proceedings in the above-
11 entitled matter.

12

13

14

15 _____ 15 November 2010

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